UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 23-60507-6-PGR
	.	
THE ROMAN CATHOLIC	.	
DIOCESE OF OGDENSBURG,	.	10 Broad Street
NEW YORK,	.	Utica, NY 13501
	.	
Debtor.	.	October 3, 2023
. . . . .	..	1:00 p.m.
THE ROMAN CATHOLIC	.	
DIOCESE OF OGDENSBURG,	.	
NEW YORK,	.	
	.	
Plaintiff,	.	
	.	
v.	.	Adv. Case No. 23-80013-6-PGR
	.	
CERTAIN UNDERWRITERS AT	.	
LLOYDS, LONDON, *et al.*,	.	
	.	
Defendants.	.	
. . . . .	..	

TRANSCRIPT OF:

[11] - MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE USE OF CASH COLLATERAL AND (B) GRANTING ADEQUATE PROTECTION

[15] - MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING, BUT NOT DIRECTING, THE DIOCESE TO (I) CONTINUE USING EXISTING BANK ACCOUNTS, BANKING PRACTICES AND BUSINESS FORMS, (II) MAINTAIN INVESTMENT ACCOUNTS AND PRACTICES, AND (III) CONTINUE USING CREDIT CARDS, AND (B) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

[16] - MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING, BUT NOT DIRECTING, THE DIOCESES TO CONTINUE TO ADMINISTER THE DEPOSIT AND LOAN FUND AND DIOCESAN TRUST FUND IN THE ORDINARY COURSE OF BUSINESS AND CONSISTENT WITH PAST PRACTICE

[17] - MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE CONTINUED MAINTENANCE OF THE DIOCESE'S INSURANCE PROGRAM; AND (II) AUTHORIZING THE PAYMENT OF OBLIGATIONS IN RESPECT THEREOF

[18] - MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. SECTIONS 105(a) AND 362(a) CONFIRMING THE APPLICABILITY OF THE AUTOMATIC STAY

[19] - APPLICATION TO EMPLOY STRETTO, INC. AS ADMINISTRATIVE ADVISOR EFFECTIVE AS OF THE PETITION DATE

[20] - APPLICATION TO EMPLOY STRETTO, INC. AS ADMINISTRATIVE ADVISOR EFFECTIVE AS OF THE PETITION DATE

[44] - MOTION FOR ENTRY OF AN ORDER REFERRING CERTAIN MATTERS TO MEDIATION

[75] - MOTION FOR ENTRY OF AN ORDER ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF

[138] - MOTION FOR 2004 EXAMINATION

[5] - MOTION FOR ENTRY OF AN ORDER REFERRING CERTAIN MATTERS TO MEDIATION

BEFORE HONORABLE PATRICK G. RADEL
UNITED STATES BANKRUPTCY COURT JUDGE
BEFORE HONORABLE WENDY A. KINSELLA
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

For the Debtor:	Bond Schoeneck & King, PLLC By: CHARLES SULLIVAN, ESQ. STEPHEN A. DONATO, ESQ. GRAYSON WALTER, ESQ. One Lincoln Center Syracuse, NY 13202
For the Official Committee of Unsecured Creditors:	Pachulski Stang Ziehl & Jones, LLP By: ILAN D. SCHARF, ESQ. 780 Third Avenue, 14th Floor New York, New York 10017
For Century Indemnity Company:	O'Melvenly & Myers, LLP By: ADAM HABERKORN, ESQ. Times Square Tower 7 Times Square New York, New York 10036

Appearances continue on next page:

For Certain Underwriters at Lloyd's London and Certain London Market Companies:	Duane Morris, LLP By: JEFF KAHANE, ESQ. 865 Figueroa Street. #3100 Los Angeles, California 90017 Buckland Law Offices By: BRAD BUCKLAND, ESQ. 59-61 Court Street, #5B Binghamton, New York 13901
For Employers Insurance Company of Wausau:	Goldberg Segalla By: JONATHAN SCHAPP, ESQ. 65 Main Street Buffalo, New York 14203
For William K. Harrington, United States Trustee:	Office of the United States Trustee By: ERIN CHAMPION, ESQ. 105 U.S. Courthouse 10 Broad Street Utica, New York 13501
For Interstate Insurers:	Parker Hudson Rainer & Dobbs, LLP By: MATT WEISS, ESQ. 303 Peachtree Street NE, #3600 Atlanta, Georgia 30308
For NTB Bank:	Barclay Damon, LLP By: JEFFREY A. DOVE, ESQ. 125 East Jefferson Street Syracuse, New York 13202
For the Survivors:	Jeff Anderson & Associates By: TAYLOR STIPPEL, ESQ. 366 Jackson Street, #100 St. Paul, Minnesota 55101
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COURTROOM DEPUTY: All rise. United States Bankruptcy Court for the Northern District of New York with the Honorable Patrick G. Radel presiding is now in session.

You may be seated.

THE COURT: Good afternoon.

MR. SULLIVAN: Good afternoon, Your Honor.

THE COURT: So I'm going to take appearances. Ms. Johnson will call the case. I'm going to take appearances and then I'm going to step off the bench. We -- Ms. Johnson, we have Chief Judge Kinsella on the phone?

COURTROOM DEPUTY: Yes, we do.

THE COURT: Great. And we'll have Chief Judge Kinsella on the phone. Ms. Johnson then will call the motions that have -- are the subject of the recusal order and then they'll let me know when I can come back out and then we'll address the rest of the motions.

Okay. So we'll start with appearances from the parties in court, please.

MR. SULLIVAN: Yes, Your Honor. Good afternoon. Charles Sullivan, Bond Schoeneck & King, counsel for the Diocese of Ogdensburg.

Also appearing with me today is Mr. Stephen Donato, Grayson Walter and Brendan Sheehan on the phone.

From the Diocese of Ogdensburg on the phone we have Father Kevin O'Brien and Mark Mashaw, the Diocesan and fiscal

officer.

(Music playing.)

I couldn't have imagined a better capstone to my appearances.

(Laughter)

MR. SCHARF: Good afternoon, Your Honor. Ilan Scharf, Pachulski Stang Ziehl & Jones, proposed counsel to the Official Committee of Unsecured Creditors, and I believe Karen Dine from my firm is also on the phone.

THE COURT: Very good. Good afternoon.

Any appearances here?

MR. HABERKORN: Yes, Your Honor. Adam Haberkorn of O'Melvenly & Myers on behalf of Century Indemnity Company.

THE COURT: Good afternoon.

MR. KAHANE: Good morning, Your Honor. Jeff Kahane of Duane Morris. I'm bankruptcy counsel for the London Market insurers.

THE COURT: Good afternoon.

MR. SCHAPP: Good afternoon, Your Honor. Jon Schapp on behalf of Employers Insurance Company of Wausau.

THE COURT: Good afternoon.

Any appearances from counsel on the telephone?

MS. CHAMPION: Good afternoon, Your Honor. Erin Champion on behalf of the United States Trustee.

THE COURT: Good afternoon, Ms. Champion.

MR. WEISS: Good afternoon, Your Honor. Matt Weiss on behalf of Interstate Fire & Casualty Company.

THE COURT: Good afternoon.

All right. Thank you, counselors. As indicated, I will step off the bench now and Ms. Johnson will call the first matter that's the subject of the recusal order. Thank you.

MR. SULLIVAN: Thank you, Your Honor.

COURTROOM DEPUTY: 23-60507, the Roman Catholic Diocese of Ogdensburg, New York. First motion for interim and final orders authorizing, but not directing, the Diocese to continue using existing bank accounts, banking practices and business forms, maintain investment accounts and practices, and continue using credit cards and granting limited relief of requirements of Bankruptcy Code §345(b).

THE COURT: Good afternoon, counselors. This is Judge Kinsella. The parties previously noted their appearances on the record.

Why don't we start with the debtor.

MR. SULLIVAN: Yes, Your Honor. Your Honor, this is Charles Sullivan on behalf of the debtor.

Your Honor, before the Court is the debtor's motion, which appears at Docket No. 15 for interim and final orders authorizing the debtor to continue using existing bank accounts, banking practices and business forms and to maintain its investment practices. And as the Court is aware, the

matter is on for a request for a final order in connection with the motion today.

I do note for the record today that Mr. Mark Mashaw, the fiscal officer for the Diocese, is participating by telephone in today's hearing. Mr. Mashaw has submitted two declarations in support of the motion. Those declarations appear at Docket Nos. 6 and 144. I would ask the Court to accept those declarations as proffers of Mr. Mashaw's testimony in connection with the motion if he were called to testify.

With the Court's permission, I would like to begin by providing a little bit of procedural background and context for this motion and updating the Court about the debtor's efforts to narrow the scope of the U.S. Trustee's objection.

First, as the Court is aware, this motion was initially filed as one of the debtor's first day motions and has been carried on the Court's calendar since July 17. The Court has entered two orders granting the relief sought by the motion on an interim basis. The first was entered on July 19 and the second was entered on August 29 at Docket No. 100. Each of those orders contained a provision waiving the requirements of §345(b) on an interim basis without prejudice to the debtor's right to seek a further interim order or a final waiver, which is what the debtor is requesting from the Court today. Under the terms of both orders, the interim waiver of 345(b) extends through the date of entry of a final

order on the motion.

At the last hearing, which took place in connection with this motion, the U.S. Trustee requested that the relief be granted on a further interim basis, rather than a final basis, and there were three separate reasons for that request to which the debtor did consent, Your Honor.

The first reason was that the debtor had not yet filed his schedules and Statement of Financial Affairs. That has occurred. That took place on August 30. The second reason was the §341 meeting of creditors had not yet taken place. That also has occurred. That took place on August -- I'm sorry, September 11th.

And thirdly, Your Honor, the U.S. Trustee sought additional time for the Committee to be appointed to select as counsel and to have that attorney get up to speed on the motion, which has also occurred. In fact, the debtor further agreed to an additional one month of adjournment from September 5, the original scheduled hearing date to today, to give the Committee time to get up to speed on the requests sought in the motion.

I am very happy to report that my office has worked extensively with the Committee counsel to answer the questions that Committee counsel had about this particular motion and I note that the Committee has filed no objection to the relief requested in the motion.

I do want to be clear that Mr. Scharf has requested on behalf of the Committee certain language in the final order that clarifies that in granting the motion on a final basis the Court is making no determination regarding whether any property, any portion of the investment accounts represent property of the debtor's estate and reserving all of the Committee's rights with respect to that issue, and we have agreed to the inclusion of that language in the final order.

I also note for the debtor -- that the debtor's July 2023 operating report has been filed. Pursuant to an agreement with the U.S. Trustee's Office, the debtor's August 2023 operating report will be filed on or before October 20, along with the September operating report. The Diocese needed to request additional time because its finance staff was busy with the press of business associated with the filing of this Chapter 11 case, as well as dealing with its auditors in connection with the year-end audit.

The sole question before the Court today and the sole remaining issue arising out of the motion is the debtor's request for a waiver of the requirements of §345(b) of the Bankruptcy Code, as applied to the debtor's investments in its investment accounts and three bank accounts with banks other than MTB Bank.

For the Court's information, as outlined in the supplemental declaration of Mr. Mashaw, the investment accounts

are overseen by a six-person investment advisory committee comprised primarily of persons outside of the Diocesan staff who have extensive backgrounds in business, finance and accounting. The Diocese investment policies are codified in a formal investment policy statement that is appended to the supplemental Mashaw declaration as Exhibit A, which sets forth a very conservative investment policy that by its terms is intended to conform to and be subject to the New York Prudent Management of Institutional Funds Act. I'll refer to that as the Institutional Funds Act, Your Honor, because of the length of that statutory name.

This is very important, Judge, because as noted in Judge Buckeye's decision in the Diocese of Buffalo case that is cited in our papers, that arose out of a motion very similar to the one that's presently before the Court, Judge Buckeye specifically found that cause exists to grant a 345(b) waiver where the Institutional Funds Act is controlling with respect to the particular funds at issue.

Your Honor, the Investment Advisory Committee that is employed by the Diocese employs an investment consultant, DHK Financial Advisors. That advisor analyzes the Diocese's investments practices and provides information and advice to the Committee as it's dispensing its duties.

As detailed in the Mashaw declaration, each of the investment accounts are professionally managed by multiple

investment managers who invest across diverse asset classes in a manner that is designed to diversify, minimize risk, preserve principle and generate a reasonable return on the investments.

Your Honor, I would now like to turn to the debtor's argument applying the service merchandise factors that cause exists for granting a waiver as requested by the debtor. First, however, I want to briefly touch upon a point in the U.S. Trustee's objection.

Your Honor, in the U.S. Trustee's objection, the U.S. Trustee I think grossly oversimplifies the cause articulated by the debtor in its motion and concludes that if cause can be shown in this case, then it is universally available in every case.

I want to point out to the Court that it -- that the U.S. Trustee's position is fundamentally incorrect. The circumstances of this debtor with its size, sophistication of management, its prudent investment practices, as have been outlined in the Mashaw declarations as imposed upon it by the Institutional Funds Act, and its significant reliance upon income from endowed funds to fund its operating expenses put this debtor in stark contrast from the vast majority of cases that come before this or any other bankruptcy court.

As the Court knows, §345 applies to all bankruptcy cases, whether individual or corporate debtors, and whether Chapter 7, 13, 12 or 11. Less than one percent of those cases

are Chapter 11 cases and even among the tiny sliver of Chapter 11 cases that make up the total number of cases administered by the U.S. Trustee's Office, the bulk of those are entities plagued with mismanagement and a lack of financial sophistication that brought them to the Court's doorstep in the first place.

Judge, I would submit that none of that is present here. In contrast, this case was precipitated by the litigation that has been outlined in the first day pleadings and in the schedules in this case, the CDA litigation, and it is not commentary on the debtor's financial management that it is in Chapter 11.

Turning to the service merchandise factors, as this Court is aware, the Court has the discretion to grant a waiver of compliance with the requirements of §345(b) of the Bankruptcy Code. The debtor respectfully asserts that in his demonstrated ample cause in the motion for the requested waiver, service merchandise identifies a number of factors for consideration as part of any inquiry of the total -- of the totality of the circumstances. All of those factors are addressed in the motion.

But I do want to identify for the record today some of the key factors that I'd like to bring to the Court's attention. First, as I've alluded to already, Your Honor, the sophistication of the debtor's business weighs heavily in favor

of our request. The debtor's operations are large and complex, as are its cash management systems. The Diocese supports the efforts of more than 80 parishes and serve approximately 71,000 Catholic faithful and its ministries and operations rely in large part upon the income generated by the investments.

The debtor's investment practices are sophisticated and overseen by independent professionals, who are outside of the Diocese, who ensure that a diversified mix of investments is maintained to achieve moderate, targeted growth with minimal exposure to downside risk in any particular investment.

Your Honor, factor two of the service merchandise factors that I want to highlight for the Court's consideration is that the size of the debtor's business operations and amount of investments involved supports the waiver. The debtor itself is a large financially sophisticated organization that employs an accounting staff who are devoted to proper oversight and management of the debtor's finance. The sheer size of the debtor's endowed investment holdings distinguish it from the small and unsophisticated debtor that §345(b) was meant to protect. And it's precisely the type of debtor that is described in the legislative history of the 1994 amendment that gave rise to the four-cause waiver. The debtor has a long prepetition track record of responsibly investing its funds to achieve reasonable growth and limited risks.

The debtor and the other Catholic entities for whom

it holds funds use the income generated from certain of the investment accounts to fund portions of their annual budgets. The charitable gift annuity investment account creates income to fund the debtor's obligations to pay annuitants. And if the debtor were forced to liquidate its current holdings and instead invest in such things as Treasury securities or maintain a collateralized deposit account in strict compliance with §345(b), it would not be able to obtain a comparable rate of interest or growth and a reduced income would have a highly detrimental effect on the debtor's ongoing operations.

Also, the reduction in income would negatively affect creditors to the extent investment account funds may be unrestricted and available to pay creditor claims.

Your Honor, I would also highlight the factor from the service merchandise test that I'd ask the Court to consider whether appropriate safeguards are in place within the debtor's own business system that support the waiver.

As described above, there are a number of safeguards already in place to ensure that the investment accounts are properly managed and that any risk of loss is minimized. First, the Diocese's investment practices are overseen by investment -- by an investment advisory committee and its policies are codified in the investment policy statement that has been submitted to court. The investment accounts in turn are managed by experienced third-party professional financial

advisors who bring valuable experience and knowledge to any investment decisions and ensure that the debtor avoids taking on undue risk.

Secondly, the debtor's investments are primarily comprised with professionally managed mutual funds and other securities which are widely traded and, thus, exposed to a constant market scrutiny and valuation. It is, therefore, unlikely that any underlying investments will be subject to unexpected or otherwise severe fluctuations in value.

Third, in accordance with the Institutional Investment Act and the prudent investor standard mandated by §1110 of the New York insurance law, which is applicable to the insurance annuities, the debtor's investments have been selected to encourage steady growth over a long-term investment horizon, but to avoid taking speculative risk that could put the portfolio at risk of substantial loss.

And lastly, Your Honor, of the service merchandise factors that I want to highlight I want to identify it that the debtor in its bankruptcy estate will experience significant benefit if the current system of investments is continued but will suffer serious harm if it is discontinued.

As described in the motion, there are many benefits to the debtor of maintaining its practices with respect to the investment accounts, most important of which is the significantly better return that the debtor expects to receive

from those investments. If that money were moved to a savings account earning little or no interest over time, the lost of investment income would have a negative effect on the Diocese's finances and would, therefore, impact not only the Diocese but its creditors.

On balance and in light of the reasons articulated in the motion, the debtor respectfully asserts that its requested waiver is reasonable and appropriate and that it has demonstrated cause for the requested waiver under §345(b) of the Bankruptcy Code. Thank you, Your Honor.

THE COURT: Thank you, Mr. Sullivan.

Before we have the Committee weigh in, let's hear from Ms. Champion.

MS. CHAMPION: Thank you, Your Honor. Erin Champion for the United States Trustee. Your Honor, in order to protect the interests of creditors, §345 and the U.S. Trustee guidelines provide two things: the debtor's funds can be deposited in an entity that has posted a bond or at a bank approved by the United States Trustee that's entered into a Uniform Depository Agreement. It's one of the many duties of the United States Trustee, Your Honor, that ensure that those protections to creditors and other parties or interests -- and other parties in interest are afforded in every single Chapter 11 case. And as pointed out in both the debtor's motion and the United States Trustee's pleadings, the Court can

waive those requirements upon a showing of cause.

I would submit, Your Honor, that because of two particular considerations in this case, a finding of cause should be based on sufficient information. First, I think history can tell us based on the other Diocesan filings that this case will not reach an expeditious conclusion. In fact, the other Diocesan bankruptcy cases have been pending in this district and neighboring districts for several years without a plan. This -- so this is not an in-and-out process and, therefore, the banking safeguards should be closely examined given the length of time it might take for creditors to see recovery in this case.

And, Your Honor, second, while such motions seeking a waiver in Chapter 11 cases has become very common, the waiver should not be something that's routine. Especially in the wake of the banking volatility earlier this year, it's important that debtors be required to submit appropriate evidence that cause does, in fact, is just to warrant such a waiver.

And at the time the motion was made, Your Honor, we had no schedules. We didn't have a 341 meeting. As noted by Mr. Sullivan, those things have occurred. And then as of yesterday evening, we have the monthly operating report for the partial period of July.

Your Honor, the information -- the additional information through those mechanisms regarding the investment

account and the underlying investment was also provided in the debtor's supplemental declaration that was filed last week and that information was, in fact, helpful.

But I first wanted just to address before I talk about the investment accounts just the non-investment banking accounts. Your Honor, the schedules did report and -- that the -- and the 341 meeting testimony confirmed that with respect to the accounts held at NBT, which is an authorized depository, there's money in excess of three million dollars on deposit. And, therefore, you know, with respect to that, I would just ask that any order entered on this motion just be -- just -- that it include language requiring that NBT sufficient collateralize beyond the 250,000 protected by the FDIC.

And also, to the extent that the debtor is going to be continuing to use bank accounts that are not authorized depositories and I note that they -- there was not a significant amount of money on deposit, but I would still ask that an order include language requiring the debtor to notify the U.S. Trustee that those amounts do change or get close to or exceed the $250,000 limit.

Your Honor, with respect to the investment accounts, it's -- the United States Trustee submits that it is the discretion of the Court to find that there is sufficient cause to allow the waiver other requirements under 345. And, therefore, I would defer to the Court whether the information

in the supplemental declaration, as well as the July monthly operating report, is sufficient to find cause.

If the Court is so inclined and finds that the service merchandise factors have been met in this case, I would just request that the order include language similar to what was ordered in the Diocese of Syracuse case, that the United States Trustee by motion on notice of the Diocese may request that the Court reconsider the waiver based on a showing that there has been a material and sustained diminution in the investment account and that cause no longer exists to support the waiver, and that the Diocese include as part of its monthly operating reports the monthly investment account information and statements. Thank you, Your Honor. I've nothing further.

THE COURT: Thank you.

Mr. Sullivan, would you like to respond to those requests before we turn to Mr. Scharf?

MR. SULLIVAN: Yes, Your Honor. I would. First, let me take them actually in reverse order, if I may, Your Honor.

Ms. Champion raised the request to include a provision in the order akin to what appears in Judge Cangilos-Ruiz's order in the Diocese of Syracuse case that would permit the U.S. Trustee to request reconsideration of the waiver on shortened notice. The Diocese would consent to that, Your Honor, of course, as well as confirmation that it will include reporting concerning the investment accounts in the monthly

operating reports. Of course, Your Honor, that makes sense.

Your Honor, with respect to the other points raised by Ms. Champion with respect to the bank accounts that are not investment accounts, first of all, the requiring of the posting of a bond by NBT Bank for the balance in excess of the FDIC insured limit, that is a new matter that was not raised in the U.S. Trustee's objection. In fact, I think the objection made clear that there was no portion of the objection that applied to that account and that's not something we've explored with M&T Bank, nor do I -- you know, I think that the 345(b) waiver request would apply equally to the non-investment bank accounts that Ms. Champion referenced because they're all part of the cash management system.

The other accounts, including the accounts at Community Bank and Citibank, Your Honor, those are merely disbursement accounts that deal with particular obligations of the Diocese as indicated in the motion. It's my understanding that very limited amounts are ever held in there. The money is moved out of the operating account and then disbursed from them. So I do want to make clear that the request for the 345(b) waiver applies to those bank accounts, as well as to the investment accounts.

THE COURT: Thank you.

MS. CHAMPION: Your Honor, if I may just briefly address that, I think I can resolve that, one of these issues

anyway, pretty easily.

NBT Bank, Your Honor, is an authorized depository and it's required of the bank under the Uniform Depository Agreement with the United States Trustee to collateralize it beyond the 250,000. I just want to ensure because of the amount of money on deposit that NBT is made aware of that and that they -- you know, if they need to provide collateralization to protect that, that they will do that under the Uniform Depository Agreement.

I'm sure we can probably figure out what the language needs to look like in the order to make sure that that is effectuated, but I don't -- we're not asking for anything above and beyond what would be required of the bank under the UDA.

THE COURT: Well, Ms. Champion, it seems to the Court that that's something between NBT and the U.S. Trustee's Office in terms of if they're qualified, depending on the level of deposit with them. It doesn't seem like that's appropriate in the particular matter that's before the Court right now. That would seem either they're approved and they have the collateral or they're not. Am I missing something?

MS. CHAMPION: No, Your Honor, you're right. It's just that the debtor is responsible for making sure the bank is on notice of how much is in the bank account so that they can go ahead and post additional collateral if that's necessary. I just wanted to make sure we weren't waiving that piece of that

requirement.

THE COURT: All right. I think what Mr. Sullivan is saying was 345(b) is being requested for everything. It just so happens that it's not applicable at this juncture to NBT or have an impact because NBT is approved to the U.S. --

MS. CHAMPION: Right.

THE COURT: Is that -- so that is correct, NBT is approved?

MS. CHAMPION: That is correct, yes.

THE COURT: Thank you.

Why don't we hear from Mr. Scharf?

MR. SCHARF: Good afternoon, Your Honor. Ilan Scharf, Pachulski Stang Ziehl & Jones, on behalf of the Committee. We reviewed the motion. We discussed it with the debtor, debtor's counsel.

Have no objection to the relief requested in the motion with the exception of some language that we did agree on with the debtor preserving everybody's rights regarding the question of whether or not funds that are held by the debtor are property to the estate or not and that language will be included in the final order.

THE COURT: Thank you.

Is there anyone else who wishes to be heard on this particular motion?

(No response.)

Hearing none, the Court has reviewed the motion, as well as the two declarations of Mr. Mashaw in support of the relief requested, and certainly has reviewed the cause for the waiver as defined in the service merchandise case and the ten factors under the totality of the circumstances in this case.

The Court believes that there has been safeguards sufficient to preserve the assets here based on diversification and the funds, the management team, the experienced third-party investment managers that exist, as well as the committee that oversees this investment. That is bolstered by the Diocese's obligation to comply with the New York prudent management of Institutional Funds Act that further, as correctly pointed out by the debtor, the Western District of New York Bankruptcy Court has found is -- was one of the factors that is relevant to the analysis.

The Court is concerned. It doesn't want to handcuff this debtor. The Court believes while it may not be a mega case, certainly is a large sophisticated case and has been outlined in great detail in the various pleadings and first day motions here.

The Court further concerns that if it -- a waiver was not granted, the harm to the debtor's estate if it was forced to liquidate would reduce the rate of return, would create expenses in liquidation, as well as the administrative expenses and the burden. And quite frankly, the Court would be

concerned it might prompt litigation of the underlying issue of ownership in the investment accounts if these other entities decided that they did not want them pulled from the investment accounts and whatever situation that may create for the debtor in that circumstance.

The Court also must procedurally note that the Unsecured Creditors' Committee, who are the primary representatives for the survivors here, are not objecting to the relief. They are not objecting to the relief requested when ultimately they are the ones with the largest stake in the outcome of this case. So in light of that, the Court is generally going to overrule the U.S. Trustee objection with the two caveats that I believe were previously discussed.

Paragraph 14 of the Syracuse order outlines the request that the Trustee made and I'm going to -- and not only the U.S. Trustee, but the Committee may also request reconsideration of this waiver if there's a material and sustained diminution in accounts such that cause no longer exists. And I believe paragraph 10 of that same order addresses the Creditors' Committee reservation of rights that it's without prejudice. Well, I guess it has to be without prejudice for the Diocese to seek an order determining some of the investments are not property of the estate and the Committee and all parties' rights to object to any such determination are fully preserved. So this is not making any

type of a determination in terms of who owns what in the account, nor is the Court adopting the allocation as indicated by the debtor in its papers in terms of the 16.1 million that's the debtor's and the other millions of dollars that are not the debtor's, so there's to be a full reservation of rights regarding that issue in the order.

With that said, the Court is going to grant the motion on a final basis, overrule the Trustee objection with those caveats and will look to you, Mr. Sullivan, for an order after reviewing it with Ms. Champion and Mr. Scharf on behalf of the Committee.

MR. SULLIVAN: Yes, Your Honor. Thank you, Your Honor.

COURTROOM DEPUTY: Continue with Docket No. 11, motion for entry of interim and final orders authorizing the use of cash collateral and granting adequate protection.

MR. DONATO: Good afternoon. Steve Donato, Bond Schoeneck & King, for the Diocese of Ogdensburg. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. DONATO: The motion before you, Docket 11, is a cash collateral motion in which the Diocese is requesting authorization to continue to use cash collateral in accordance with 11 U.S.C. §363 in the ordinary course of business.

We made the motion because we have an obligation to

NBT Bank and NBT's security interests reflects an interest in the Diocese cash collateral.

At present, there's a letter of credit that's outstanding in the approximate sum of just below two million dollars as a Workers' Comp letter of credit. It's $1,950,707 and there's also a pledge agreement that creates a blocked account in the sum of 2.3 million dollars, which provides collateral to NBT if and when that line of credit is ever drawn. At present, the line of credit is not drawn, there's no indication that it would be drawn.

We made the application in accordance with §363 to request the authority from the Bankruptcy Court to utilize the bank's -- excuse me -- the Diocese cash collateral in the ordinary course recognizing that there is an obligation to NBT, as I said, slightly less than two million dollars and, of course, maintaining the blocked collateral account, which I indicated is 2.3 million dollars.

We've had communications with NBT. We've received no objections concerning the relief and we would respectfully request the Court enter an order.

THE COURT: Thank you.

Ms. Champion, does the United States Trustee take any position on the cash collateral motion?

MS. CHAMPION: No, thank you, Your Honor.

THE COURT: Thank you.

Mr. Scharf?

MR. SCHARF: Yes, Your Honor. The Committee reviewed the motion, discussed it with the debtor and, given the limited purpose of the cash collateral, believes the debtor is properly exercising its business judgment entering into this motion.

THE COURT: Thank you.

Is there anyone appearing that noted their appearance from NBT? I believe that was Mr. Dove in the first day orders.

MR. DOVE: Yes, Your Honor. Thank you. Jeffrey Dove of Barclay Damon on behalf of NBT. We have no opposition to the motion.

THE COURT: Thank you.

Is there anyone else on the line or in court who would like to be heard on the cash collateral motion?

(No response.)

Mr. Donato, are you seeking the relief on a final basis. Is that correct?

MR. DONATO: Yes, Your Honor.

THE COURT: That's what I thought. Thank you.

The Court has reviewed the cash collateral motion on the record before it and the prior proceedings with respect to the motion. The Court is going to grant the authorization to use cash collateral and grant adequate protection as outlined in the motion on a final basis and will look to you, Mr. Donato, for an order after NTB's consent and the parties

have signed off on the final version of that order.

MR. DONATO: Thank you, Your Honor.

COURTROOM DEPUTY: Next motion is motion number 16, motion for interim and final orders authorizing but not directing the Diocese to continue to administer the deposit and loan fund and Diocesan Trust Fund in the ordinary course of business and consistent with past practice.

MR. WALTER: Good afternoon, Your Honor. Grayson Walter on behalf of the debtor. Your Honor --

THE COURT: Good afternoon.

MR. WALTER: Your Honor, by this motion the Diocese is seeking authority to continue to administer in the ordinary course of business consistent with its prepetition practices two different financial programs that it runs for the benefit of parishes and other related Catholic entities.

The Court has already entered two interim orders granting the relief requested in the motion on a temporary basis. Your Honor, the Diocese submits that further relief is needed to ensure the parties -- those related parties have access to monies that -- the Diocese takes the position it belongs to them. Understand that the Committee has not -- has reserved its rights on that, but they are held in the name of the Diocese. The Diocese respectfully submits that the facilitating -- the fiscal and operational needs of parishes and related entities is a large part of the Diocese's mission

and also necessary is the Diocese derives a large part of its own operational revenue from those related parties.

Your Honor, the two programs the Diocese is seeking authority to continue pursuing this motion are the deposit and loan fund, which operates akin to a bank account for parishes, as well as a Diocesan Trust Fund, which houses endowed permanently restricted monies, but also invests them and grows them and pays off dividends to the parishes on a quarterly basis.

The Committee filed a limited objection to the motion asserting a need to conduct additional diligence. We've reached agreement with the Committee for entry of a third interim order that will allow time for that investigation to continue and also agreed with the Committee on additional withdrawal amounts from the deposit and loan fund and from the trust fund.

Your Honor, the Diocese is seeking limited interim authority over the next month to continue to honor deposits up to a maximum of $175,000 in withdrawals from the deposit and loan fund, as well as authority to originate up to $30,000 in new loans out of the deposit and loan fund.

We've also agreed to provide the Committee with 14 days' prior notice before honoring any withdrawal in excess of $25,000. We've agreed to assemble a reservation of rights to the Committee on the property of the estate question.

Your Honor, with respect to the Diocesan Trust Fund, at this point in time we are seeking authority to honor $218,750 in previously scheduled third-quarter dividends out of the Diocesan Trust Fund, which is the same total dividend amount that was paid out to DCF participants in third quarter of 2022. So same amount as last year.

Your Honor, other than the Committee's limited objection, which I'll let Mr. Scharf speak, but I believe it's been resolved and received no other opposition or responses to the motion, I would ask that it be granted again on a further interim basis.

THE COURT: Thank you, Mr. Walter. When you said, what -- what was the time frame for the $175,000 withdrawal and the $30,000 new loan?

MR. WALTER: Your Honor, that would be from today until the next time we're in front of the Court, which I think is November 2. I'm not sure if we're working off of Your Honor's standard hearing dates or Judge Radel's but, you know, it would be approximately a one month additional extension.

THE COURT: Certainly. We will be -- this court will work with Judge Radel's calendar, so it would be November 7th at 1:00, believe, is the next date that we've talked about for follow-up proceedings.

And the $30,000 for new loan, is that per entity per participant or is that --

MR. WALTER: No, that's in total, Your Honor.

THE COURT: In total. Okay. Thank you.

Okay. Why don't we hear from the Committee?

MR. SCHARF: Ilan Scharf, Pachulski Stang Ziehl & Jones, for the Committee. Thank you, Your Honor.

The Committee has requested information from the Diocese, has received some, is continuing to do its diligence with respect to the DTF and the DLF. We did agree on reservation -- language regarding reservations of rights. That would expect to continue through to a final order.

We've talked with the Diocese about a number of different options for a final order in terms of something longer term or month to month that would continue with Committee consent and the Committee recognizes the importance of funding operations for the non-debtor entities and at the same time wants to make sure that assets are preserved and will do its diligence and work to negotiate a resolution with the Diocese.

THE COURT: And Mr. Scharf, the Committee doesn't have any objection to the dividends?

MR. SCHARF: No, Your Honor. We reviewed the dividends and a schedule of prior year's dividends that tracked since it's dividends and not principal being paid out we were -- to the various operations, we're not objecting to that.

THE COURT: Thank you.

Ms. Champion, does the United States Trustee take any position on this motion?

MS. CHAMPION: Your Honor, thank you. The U.S. Trustee previously had requested the relief be entered on an interim basis only just to allow the Committee to retain counsel to get up to speed. And it appears that they have done so, so at this point in time, Your Honor, the United States Trustee is not taking a position on this motion and will defer to the Committee.

THE COURT: Thank you. Is there anyone else either in the courtroom or on the phone who would like to be heard on this motion?

MR. DOVE: Your Honor, Jeffrey Dove of Barclay Damon representing the ad hoc committee of parishes. The parishes support the extension of the authority.

THE COURT: Thank you.

The Court considered the motion, previously entered interim orders and will grant the relief as outlined on the record with the limitations in both the withdrawals and the new loans on the dividends. We will look to you, Mr. Walter, for a further interim order after reviewing that with the Committee and then we'll adjourn for further proceedings to November 7th at 1:00, which as indicated would be a regular Utica court date.

MR. WALTER: Thank you, Your Honor.

THE COURT: Thank you.

So with that, I believe that concludes my activities for the day and will defer to Ms. Johnson to recall Judge Radel back to the stand.

COURTROOM DEPUTY: Thank you, Judge Kinsella.

THE COURT: Thank you.

(Pause)

COURTROOM DEPUTY: All rise. You may be seated.

The next motion in the Roman Catholic Diocese of Ogdensburg, New York is Docket No. 19, application to employ Stretto, Inc., as claims and noticing agent effective as of the petition date.

MR. DONATO: Thank you, Your Honor. Steve Donato. Grayson Walter is going to argue that motion or at least advise you.

What we were hoping to do, was to address all uncontested motions first, get those removed. So that would be the Stretto motion, the 105 stay motion, the insurance program motion, and then the second Stretto application. So if we can do that, I think it's in line actually with the calendar, anyway.

THE COURT: The stay motion I don't have as unopposed, though. Stay motion is opposed.

MR. DONATO: Oh, sorry. And it's resolved, so sorry.

THE COURT: Okay.

MR. DONATO: It is opposed, but it is resolved.

THE COURT: Very good.

MR. DONATO: Then what I would propose to do, is we have basically three more motions then. We have the mediation motion, we have the proof of claim bar date motion, and then we have the 2004 exam. I think the best way to handle this would be to do it in the following order. Do the mediation motion. This is after the uncontested motions. Mediation motion claims bar date, then do the 2004. Some of the issues raised in the 2004 would be addressed in the mediation of the bar date motion. So from an order -- a logical order, we think that would be the best way to approach it.

THE COURT: Fine with me.

MR. DONATO: Thank you, Your Honor.

THE COURT: So why don't you call, Ms. Johnson, please, the -- yeah, the two -- I think like we originally planned, the two Stretto motions.

COURTROOM DEPUTY: Two Strettos?

THE COURT: Yeah. Call those together. The two Stretto motions can be called together, I think.

COURTROOM DEPUTY: Okay. Also Docket No. 20, application to employ Stretto, Inc. as administrator advisor effective as of the petition date.

THE COURT: Thank you.

MR. WALTER: Thank you, Your Honor. Good afternoon.

These -- both these applications are unopposed. Stretto is going to facilitate the Diocese providing mailings and also claims handling services on a confidential basis, which is necessary to preserve the confidential nature of the proofs of claim in this case. And we'll also be looking to them to provide certain other services when it comes time to solicit plans, which we would seek to have approved as an administrative advisor role under 28 U.S.C. 156(c). There's been no opposition or responses filed to these. They've been entered as interim orders and we'd ask that the Court enter them as final orders at this point.

THE COURT: Thank you, Mr. Walter. Applications are granted. We'll look to you for an order.

MR. WALTER: Thank you.

COURTROOM DEPUTY: Now, which one?

THE COURT: The insurance motion, Docket 17.

COURTROOM DEPUTY: Okay. So we'll have them in order, then?

THE COURT: Right.

COURTROOM DEPUTY: Docket No. 17, a motion for entry of interim and final orders authorizing the continued maintenance of the Diocese insurance program and authorizing the payment of obligations in respect thereof.

MR. WALTER: Thank you. Again, good afternoon, Your Honor. Grayson Walter.

Your Honor, as outlined in our papers, the Diocese maintains a joint insurance program that covers the Diocese, parishes and other related entities. By this motion, we're simply asking the Court to approve a continuation of that program in the ordinary course of business. The Court has already entered two interim orders granting the relief on a temporary basis. We're now seeking the entry of a final order.

The Committee did file limited response to this motion. We've, I believe, resolved all those issues. First, we've agreed to the same reservation of rights language with the Committee on property estate arguments, as far as insurance funds are concerned. We've also agreed to provide the Committee with 14 days' prior notice before entering into any litigation settlement agreements or if claim abuse defense -- these claim defense costs exceed $10,000 in any given month.

Subject to any questions that the Court may have or additional comments that Mr. Scharf may want to add, I'd ask that this motion also be granted on a final basis.

THE COURT: Thank you, Mr. Walter.

Mr. Scharf?

MR. SCHARF: Your Honor, we filed our limited response and with the language that's been added we consent to entering the order.

THE COURT: Very good. Thank you.

Motion is granted. Order on consent to be submitted.

We'll look to you for that, Mr. Walter.

MR. WALTER: Thank you, Your Honor.

COURTROOM DEPUTY: Docket No. 138 --

THE COURT: Actually, sorry --

COURTROOM DEPUTY: -- motion for 2004 --

THE COURT: Sorry, Ms. Johnson. Can we do the stay confirmation motion at Docket No. 18?

COURTROOM DEPUTY: Docket No. 18, motion for entry of an order pursuant to 11 U.S.C. §§105(a) and 362(a) confirming the applicability of the automatic stay.

MR. WALTER: Good afternoon again. Grayson Walter, Your Honor.

By this motion, the Diocese is seeking entry of an order confirming the applicability of the automatic stay to the approximately 124 pending lawsuits naming the Diocese as a defendant. In the motion, the Diocese also sought the Court's guidance under the Second Circuit's *Fogerty* decision that plaintiffs may wish to sever the Diocese from those actions would need to first obtain a modification of the automatic stay from this Court before proceeding with the motions to sever in state court.

The Committee did file an objection to the motion suggesting that this was requesting an advisory opinion and that the -- to the extent *Fogerty* should only be tested in the context of a live case controversy.

Your Honor, the Diocese would respectfully submit that there is a live case controversy here, 124 of them, and that the Diocese is a debtor in bankruptcy, is entitled to know the extent to which the automatic stay applies. However, in agreement with the Committee we've agreed to remove the language from the proposed order that was included in the prior interim order regarding stay applicability to severance actions. Your Honor, the Diocese, of course, reserves its right to pursue appropriate remedies in the event there is a violation of the automatic stay, but we think we've made our point clearly that we think it does apply to request to sever. We're not looking to push that issue as far as the final order here.

THE COURT: So the order will confirm the applicability of the stay to any action in which the Diocese is named as a defendant --

MR. WALTER: Full stop.

THE COURT: -- without -- yes, come --

MR. WALTER: So --

THE COURT: In parentheses in between the lines without any determination as to whether that would in -- the stay would include a motion to sever, discontinue against the Diocese, bifurcate against the Diocese.

MR. WALTER: Correct, Your Honor. Basically, from the interim order that Your Honor entered, we would just

excise, I believe it was paragraph 3, so the paragraph dealing with severance.

THE COURT: Thank you, Mr. Walter.

Mr. Scharf.

MR. SCHARF: Since Mr. Walter did say that he believes that there is no -- there is a live case for controversy I'll just have to retort we do not believe there is a live case for controversy. With that said, the order will essentially stay, as Your Honor said. The stay applies with the Diocese as named, full stop, without any explanation as to whether -- what the limits of the stay may be and parties can take action at their own peril.

THE COURT: Thank you, Mr. Scharf.

Order on consent to be submitted.

MR. WALTER: Thank you, Your Honor.

THE COURT: Thank you.

Now motion for mediation.

COURTROOM DEPUTY: Mediation?

THE COURT: Yes.

COURTROOM DEPUTY: Qualifications?

THE COURT: Yeah. 44 and then 5 in the adversary.

COURTROOM DEPUTY: Okay. Case number -- or motion number 44, motion for entry of order referring certain matters to mediation. There's also a motion number 5 for an entry of an order referring to certain matters to mediation in the

adversary 23-80013.

MR. DONATO: Thank you, Your Honor. Steve Donato for the Diocese. Before the Court is a motion to request referral to mediation in regard to an insurance adversary proceeding that we filed on a petition date. That insurance adversary proceeding is an action involving all of the carriers asking for determinations of coverage. Coverage liability, coverage obligations, things like that.

Not a lot of new things going on here. We've -- this is our fourth Diocesan case. We've done this four times now. We're getting a few different iterations from my adversaries, which I'll discuss, but the general concept here is we have, excuse me, multi-party litigation. This is a mass tort. We've got multiple insurance carriers. We have a Creditors' Committee. We have a Diocese. We have the parishes, all the non-Diocesan entities.

This case, we respectfully submit, is perfectly set up for mediation. There is no reason to be withdrawing references and seeking to pull the case, go to the District Court, litigate. And frankly, when I read all the responses, weeding it all out, everybody says mediation is the way to go. Frankly, I'm surprised that there was even any opposition.

However, excuse me, as indicated, it's not our first rodeo and frankly, just about every carrier in this case with the exception of Century we have dealt with the other cases and

it has gone fine. It has been very good cooperation. So it's true. We filed our motion early. Then at the request of the Creditors' Committee, the U.S. Trustee, we adjourned the hearings. And then we get jammed with these responses from the carrier saying, they want mediation yesterday. We don't have any documentation. My God, the house is on fire.

Stop. It's all hyperbole. It's all games. The bottom line is, we understand to go to mediation. All our adversaries must have discovery document production. It's been done before. Everybody over there knows that. Okay. Except for Century because they haven't been in this case before.

So -- but there's no games. Bottom line is we would set a time frame that works. We have extensive discovery that is ready to be sent out, you know, for things like that. So just that first you read these things. You think the house is on fire and the world is burning down because somehow we're going to drag people to mediation, in three hours they're not going to have their stuff. We've done this before.

So I ask all the carriers to kind of take a breath here and let's kind of address the reality of the situation. Every case has been resolved through these Diocesan cases. I'm going to ballpark about 24 or 25. It's about 20 that has been resolved. Every one of them mediation. Okay. No full bore litigation. I read some of the carriers' responses. They wanted to gin this thing up. It's -- I don't understand it.

So the mediation request we submit makes perfect sense.

Now, we have to pick a mediator and in our other cases we were successful in several of actually getting a unanimous selection of a mediator.

Now, things change, tensions flare, demands, things like that. But what I'm suggesting now, not what's in our papers. Again, because of our courtesies in extending and adjourning things, the carriers are jamming us on dates. I'm suggesting that we pick a date of October 25. Doesn't have to be October 20 -- we could pick Halloween to allow for a two or three-week period like we've done in every other case. We reach out to our friends at the carriers. We said, you're a mediation party. You've got input on potential mediators? Give them to us.

We talked to our friends at the Creditors' Committee. They already have one candidate. Okay. It's all fine. We do this in a controlled fashion, not a lot of emotion, not a lot of stress. We make phone calls. Former Judge Sontchi, he's a potential candidate. We have concerns about him, but we're going to interview him, of course, and we will give some suggestions to the mediation parties.

Will we have an agreement? I don't know. Unfortunately, as these cases drag on frankly, just parties' positions harden in all respects. Plaintiffs are more aggressive, carriers are less aggressive and the Diocese is

right in the middle. Okay. But the bottom line is mediation is the way to go.

I'm proposing October 25. If one of the carriers wants to go to Halloween, I'm fine with that. The idea is allow a little air out of the balloon. Let's go back to our offices. We'll say we'll contact everybody and say, you've got ideas, tell us who they are. Surely cost is a concern. Some of these mediators charge 12, 15 grand a day. Okay.

Ogdensburg is not Rockefeller Center. So we need to be careful about those kinds of issues. However, that's the first piece because everybody was concerned about who would pick the mediator or when it would be done. I'm respectfully suggesting 10/25 is the cutoff date. If people want a little more time, we're totally fine with that.

Just so the Court is aware, I did this -- I think it's appropriate to do the mediation motion first, but in the bar date motion, just so we can get that out again with the idea that we adjourn things at the request of people, the Creditors' Committee asked us to make the bar date January 18, 2024. We are in agreement. I'll bring that up later and, of course, it's your discretion. But just so you are aware, there's no resistance. We had originally proposed November 23. Time rolls, time moves and so we are in agreement with the Creditors' Committee to set the bar date subject to your input on January 18th. That gives us a lot of time to work on trying

to have a consensual mediator, to provide extensive discovery, which we have done in all of our Diocesan cases. We have done these voluntarily. Okay. We don't see the need to be filing adversary proceedings, filing motions, things like that. We do this on a voluntary basis. That's how you get cases done and that's how you keep administrative expenses down.

So I wanted to note that bar date change, which I will do later. We'd seek a consensus of a mediator by October 25. If we can't, then what we've done in the past is we would ask the mediator parties, we'd work with the Court, set a time frame, submit a list of three choices, present it to Your Honor. Some judges have then sought further input. Other judges just made a decision. That's all fine.

But hopefully, we can either narrow the choices so maybe it's one of two kind of a thing or if we can't, then we submit suggestions to you. And once in a while there's crossovers where we might submit something and the Committee might say there's a match or a carrier is going to be a match and, of course, it's all on your discretion.

But the first piece in mediation, besides getting an order to go to mediation, is who's going to be the mediator. There are not that many mediators out there that had the skill set to address this mass tort issue, to rep specifically with CBA background. State court counsel are major players. There's a Creditors' Committee, but the state court counsel run

the case. So you have to understand what goes on in those rooms and there's not that many people that do it, but we're obviously in the process now of selecting or seeking to find candidates. We have some. I'm asking for basically October 25 to do that.

Another issue, the carriers file things and said, oh, my God, we're going to be dragged to mediation in six hours. Let the mediator pick the date for the first session. Just stop with all this other gamesmanship. Just let the mediator do it. We think there could be a benefit in having a mediation session in advance of the proof of claim bar date generally.

The meat of the negotiations, of course, after the claims are filed. Then we go through the mapping process, right. We've got seven carriers. We take 124 claims, we line them up. Okay. We pull them, we look at LMI, you know. You've got, you know, 28, you know, that kind of thing. We can't do that mapping yet because we have to get the proofs of claim, which I'll bring up later in the argument. That's why we need some detail as far as what's transpired.

So the meat of the mediation occurs after the bar date, after an opportunity to map the claims so that you can see who's the biggest carrier with the largest potential exposure and work down from there and then that starts the mediation process.

But as far as the timing, when is the first mediation

just let's put it in the mediator's discretion. If the mediator's position is, no, it has to be in February, you know, after the bar date, that's fine. Okay. The Diocese is not trying to jam anyone, but frankly, the way they wrote the papers back to us, they gave it the appearance that we were.

Sharing mediation costs, nobody has objected to this. We're the ones that brought it up. We did it in our first case. The way we work it out is we're concerned. You know, at 10, 12, $15,000 a day we've got concerns. But the idea would be, and not even opposed to it in the hundreds of pages I've got, to split the mediation costs 50/50: 50 for the estate, so that's the debtor and the Committee, and then 50 percent share among the carriers. Okay. And we've done that successfully in the past. And again, nobody raised any issues on that, but I just wanted to make an observation.

We do seek a stay of the insurance adversary proceeding. We seek a tolling of all deadlines. We seek an absolute full reservation of rights for everybody. There's no games. Nothing. Putting it on the record so there's no grey area because when you read these things, all of a sudden people think we're trying to do something impossible. Playing no games at all. Stop the litigation. Preserve all rights. Go across the street, work on mediation in an informal fashion, see if there's a way to get this done. That's all we're seeking as far as the stay of the pending adversary proceeding.

Responses. The Committee raised a good issue and it was my oversight when we drew the papers. The mediator that we seek would be a mediator for the case. It is not just, I apologize for that, we should have been clearer on that, no issues. That mediator must understand plan and disclosure statements, third-party releases and every other issue you could imagine that will arise in these cases. So the mediator for the case is absolutely acceptable to the Diocese.

I mentioned the Committee had proposed a mediator. We're happy to interview that mediator. As I indicated, we have some concerns, but we -- that will be on our list and we'll make that happen and we'll be able to then assess moving forward, possibly with the Committee's selection. Committee has, in the past, provided other selections as well and we're working on that as well.

Carriers want documents. Oh, my goodness. We understand and we are going to do it. We have what we're working on, a package of thousands of pages of documents. This case is not that old. This is -- we're just starting this. But we understand -- and by the way, mediation is voluntary. A mediator can compel you to call. A mediator can make you show up, but a mediator can't force you to settle. So a media -- a mediation party can talk with their feet at any time meaning, Mr. Mediator, you brought me here but the Diocese didn't give me any financial information; I'm not willing to give you a

dime. That's what mediation is. We understand how this is played, so there can be no issues that we have to produce these documents and we will.

THE COURT: Let me ask you this. So I hear you saying, look, been there, done that, no need to reinvent the wheel and I get that.

But one way to read the objections is been there, done that, and we're trying to do it better and we're trying to apply lessons learned, and set this up for a more successful, more expedited, less cost-intensive mediation. And part of that is adjusting the deadlines, adjusting the disclosure, kind of keeping a tighter hold on my end, rather than just motion granted, come back and let me know when you've worked it out.

So what say you to that?

MR. DONATO: What I say is all of those carriers, except for Chubb knows it's already worked. There may not be -- but there is a settlement in Rochester. We've got a settlement with LMI. We've got a settlement with Interstate, right? We've got one non -- it has worked.

But nobody's complaining at these mediation -- they're not saying the Diocese didn't give me this or that. The reason they're not settling is that demands are high and the carrier numbers are low. Let's cut through it. Okay. That's the issue. It is not the Diocese. The Diocese is trying to exit this case as soon as possible so that it is

moving as expeditiously as possible.

If the Court wants to put some more guidelines on it, that is totally fine. All I'm sharing with you is, it has worked fine. There has been no issues, as far as I know. Now, carriers will come up here and tell you there have been, but in mediation it's natural. You get thousands of pages of documents, then you're drilling down and then oftentimes, you know, a carrier would say, hey, can give me this little piece, that kind? Sure. We do that. Committee, hey, we need some supplemental. And we do that a flowing -- free flowing basis.

So I think it works. I guess if we listen to a parade of carriers and they tell you that I'm full of hot air, we'll put some more guidelines on it or if you want to do that. All I'm sharing with you is the reason we're doing it informally is specifically to avoid the 35-page motion we got on a 2004 exam in a case that's very young, right? We're not going anywhere. So that's what I'm asking for as far as, you know, the discovery process.

The Committee, as I indicated, the -- has a possible candidate. We will review that. The carrier is -- the thrust of the carriers is basically we need documentation before we go to mediation.

Now, LMI -- interesting, this is new and I'm surprised because LMI -- actually, we've settled with LMI. Okay. We know lawyers very well. We live with them. But they

support mediation. No question. Their Docket No. 139 says they support mediation.

But then they want to withdraw the reference. They want to respond to the complaint -- to the adversary proceeding complaint, and then they want to do discovery and I can't square that.

THE COURT: Well, I read that and I'll -- we can ask about that. I read that as an argument about what's the escape hatch. How do we get out of this and to what extent can we just get -- right. We don't need to go back and make a motion to get out of mediation, like some built-in escape hatch, which could be a motion to discontinue litigation or a motion to withdraw the reference. That's how -- that's -- I had put that under this -- the bucket of we need a built-in escape hatch here so we know that we have that as a lever here and to induce appropriate diligence and also an escape hatch if we find it's not -- we're not making the progress we need to be making.

MR. DONATO: Sure. And I mean, if -- I don't know what's -- I mean, if it's an escape hatch, meaning they've got to make a motion so we have an opportunity to respond, that's fine, you know. While there's frustration, there's a settlement in Syracuse in regard to the Dioceses and the parishes. There's settlements in Rochester. There's ongoing mediation going on in Buffalo. We're involved in Albany. You know, yes, it's frustrating, but it is actually working. Okay.

It may not be working to the speed that people want, but we're trying to move it as much as possible.

THE COURT: And why not -- why not just defer your motion, let the adversary -- they put their answers in, do some preliminary discovery document exchange and then put it in mediation. Why not if you're going to do document exchange anyway, why is it better done in the context of informal exchange through mediation versus formal discovery with deadlines and --

MR. DONATO: It's much faster and it's much more administratively better for the estate to do it in an informal manner. I cannot understand why we would ever seek to withdraw the reference at this stage of the case. One, if it goes upstairs, with all due respect to the District Court judges, they're not bankruptcy lawyers. And frankly, I don't think they're going to move the case. I think that's a slow-down process.

Now, if you're a carrier, and they always disagree with me, carriers get paid to keep their money in their pocket. Okay. Defense costs, they don't care. That's in their budget. As long as they're going to avoid the indemnity obligation, that's fine. They tell me, no way they want to resolve it. Well, if they want to resolve it, then don't go through some delay attempt going up to the District Court, all that other stuff, when we are telling you right now, you'll get the

documents and our actions have confirmed that in our prior cases.

So that piece about LMI did surprise me and if it's an escape hatch that's fine. But at this stage when I read all of the objections, I walked away saying everybody agrees to mediation with some tweaks and some adjustments. Okay. So we'll make some tweaks and adjustments. We are absolutely fine in producing all of the documentation.

You know, if somebody wants an escape hatch they always have the ability to come right back here and say, you know what, Mr. Donato's suggestion didn't work and here's why. You know, that kind of a thing. Again, if it was our first case, you know, maybe there'd be something but we've demonstrated that we've done this before.

And that's pretty much it. I think the mediation concept really just makes, you know, complete sense and based on our experience and the fact that you'll give the mediation parties escape hatches which, you know, what --

THE COURT: But you wouldn't oppose the inclusion of an escape hatch in an order granting me -- if I said mediation granted without prejudice to the right of any party to seek to withdraw the reference, terminate mediation, obviously on notice opportunity to be heard --

MR. DONATO: Right, the only thing I'd like is I'd like you to be the gatekeeper. You know, I mean, you're the

primary judge, so I want everybody to have to come to you. That's the only thing I'd want. I don't want to be in a position where somebody is coming to you, now I'm going to the District Court. You're the presiding judge over the insurance adversary. Escape hatches are fine. We use a loose term. That's why I'm just more mature. I know what I'm saying. If they have to come back to you and somebody says, you know what, it isn't working, Judge Radel, here's my motion, please send me back to insurance adversary terminating me, I have no problem with that.

THE COURT: Thank you, Mr. Donato.

MR. DONATO: Thank you.

THE COURT: Do I hear from Mr. Scharf next?

MR. SCHARF: Good afternoon, Your Honor. This is the first time the Committee is appearing in front of you, so I just wanted to take a moment and just let you know how the Committee is working, who the Committee members are and how we kind of run these cases.

THE COURT: Thank you.

MR. SCHARF: I think it will be helpful. And if you don't want to hear that I can --

THE COURT: No.

MR. SCHARF: -- launch into the dark.

And so my firm has been representing survivors in Creditors' Committees for about 20 years, a little -- maybe a

little over at this point and I've been doing it personally for about 15, and we've mediated every single case that's gone to conclusion, has done so through a mediation process.

The Committee members in this case are seven individuals who were sexually abused as children while they lived within the Diocese of Ogdensburg. We meet with them on a weekly basis. We both skip an occasional meeting, but we do meet with them and report to them every detail that's going on in the case and they will be involved every step of the way, including attending mediations.

Those folks are represented by state court counsel, who are also a very important part of this because there are about 124 cases pending and state court counsel who represent Committee members represent in excess of 50 percent of the cases out there, so it's a critical mass of the survivor community within the Diocese of Ogdensburg. And we meet with them, along with the Committee members. We try to make everything done on consensus and move forward with their input, but recognizing that the Committee is the official voice in this case.

In terms of -- I'll turn to the mediator motion. It's important for this case to be sent to mediation. The Diocese filed the request within the context of the insurance adversary proceeding. As Mr. Donato said, he clarified that. This needs to be a global mediation. I think there's been some

confusion in courts in past cases, but this has to be a process that encompasses all aspects of the bankruptcy case, not just insurance and not just issues between the Diocese and the survivors. There's -- these are all interrelated issues in a bundle.

And Your Honor, I do want to address a couple -- throughout my presentation, I'll try to address a couple of Mr. Donato's comments. The Diocese is not caught in the middle. The Diocese is responsible for this problem. The survivors are caught in the middle. The survivors are the only -- are the party that really doesn't want to be here. They are the victim here. They are the aggrieved party. So the Diocese is not caught in the middle between survivors and insurance companies. And I want to avoid that kind of language that puts the problem on survivors' backs as opposed to the responsible party.

During -- when we go through the mediation process, we have to maintain flexibility. So in this case -- and part of what we're all doing is dissecting why these cases have gone -- go on for so long and are there better ways of building the mouse trap because we want to learn from every case we've worked on.

I do want to note there's a big distinction between this case and many of the other cases in New York state. This case filed after the CVA window closed. The Diocese of

Rochester filed about a month after the window opened, maybe less. I think -- sorry, just exactly a month after the window opened. Buffalo was a few months after the window opened and then we had a global pandemic that extended that one-year window to a two-year window. And the reality is that when you're dealing with the insurance companies and frankly, you're dealing with claims against the Diocese, it's hard to have a constructive mediation process when you don't know what the claims are. So if you start a mediation process with 35 claims that were filed early on in the case before a window closed, okay, that's -- you know, you make a demand based on 35 claims and in Buffalo we had 850 claims. We looked -- it's hard to have that kind of negotiation.

So this case has an advantage that it filed after the CBA window closed. We know the universe of claims. There are some adult claims that can still be filed through November, but if history is a guide with respect to the other Dioceses out there, there are a handful of those cases that were filed and they require different levels of proof than a child victim claim.

So the other advantage we have here is that the survivor group community did have -- there was a group of attorneys, an ad hoc committee of counsel who received information and started discussions with the Diocese, so we have had an information flow where we now -- that has to be

supplemented and we will do that.

In these cases it is rare for my firm to file a 2004 motion seeking information from a debtor. We will do so if we have to, but we found that it's more cost effective, more streamlined to get that information through informal processes, even under an umbrella of mediation and avoid the cost in litigation over motions to compel, motions to quash, and all the back and forth that that entails and that goes for commercial cases as well. That's just a better practice.

So our preference would be to start a process with an informal process to the extent the Diocese produces documents and ensures that having been produced to us we would like copies of them. We did send an NDA. We know the Diocese is going to require confidentiality. We sent them a draft NDA based on prior NDAs we've done in other cases, so we want to get this process moving as quickly as possible.

Because of mapping out the issues for mediation, there are issues about property of the estate here, issues about payment from the Diocesan -- both the Diocesan grouping or the Diocesan family, all the entities that are within the Dioceses' orbit. Those issues are separate from the insurer issues, so we can have a mediation start. We can have discussions before the bar date. We can talk about information exchanges before the bar date. We can get the mediator up to speed on the issues for this Diocese before the bar date.

So parties can submit mediation statements. They may not have a final demand number on them, but we all know the issues. We all know that we're going to have an argument with the insurers over what number of occurrences a particular claim had or what policy limits apply and what defenses apply, but we want to do it in an orderly manner.

So you can get the mediation started before the bar date. We do recognize that final demands require a bar date. We'll talk about the bar date motion in a minute and what information should be provided, but we essentially need to know who was the perpetrator, what happened to the child, when did it happen and where did it happen. Sort of like our old English teacher said, who, what, when, sometimes where, why. So we do want to have that process started. We're ready to hit the ground running.

In terms of mediator selection, we -- again, we try to build a better mousetrap or the right mousetrap for a particular case and we have had experience with a couple dozen mediators at this point throughout these cases. And Judge Sontchi stepped off the bench a few years ago. He is uniquely qualified in one sense, which he's the only judge we've contacted who was -- who would -- who presided over a Diocesan case and entered decisions on property of the estate and knows insurance law, who fits -- checks all the boxes of the skill set the mediator would need and the experience a mediator would

need. And if the only issue is fees, we can address that, but we really don't want to be penny-wise and pound foolish.

I take very seriously maintaining and limiting the administrative burden. You'll notice I'm here by myself. I do not have a team following me around. I'll bring people when it's necessary, but we try to be very efficient in the way we work and we will carry that over with respect to a mediator. We don't want to hire my best friend just because he happens to be a nice guy and I want to give him the work. We want to try to hire the right person.

And, you know, we did cite Judge Buckeye's decision that he entered the Diocese of Buffalo where we had one mediator appointed and a desire for a co-mediator. And there was a dispute between insurers and the Diocese and the Committee over who that person should be and the Committee recommended a person, support of that person. And Judge Buckeye essentially said that if all the qualifications are equal and you can't really distinguish among the different mediators by qualification, if they're all qualified, give some deference to the Committee selection as the aggrieved party and, frankly, as the party that's at a disadvantage in these cases.

Interestingly, when the insurers -- and I'll just address some of the insurer requests here to kind of move this case forward on the adversary -- on their adversary proceeding.

It's a bit perverse that survivor cases are stayed, stuck in limbo. And the survivor cases are really the ones that give rise to the underlying liability. That's where the liability flows up from, but the insurers want to go forward with their case.

And so a survivor may not be able to take the Diocese's deposition in their state court case by operation of the automatic stay, but they're going to be allowed to take survivor depositions on insurance issues when they raise defenses like the expected and intended defense. And if you look at the questions they raise and want to include in the proof of claim form, they're really going right at the heart of defenses that can be asserted in the insurance adversary proceeding, as well as the underlying cases.

So we don't want to have a situation -- it would be unjust to have a situation where survivors are disadvantaged because they can't press their story, but the insurance companies are allowed to press their claims, their defenses and tamp down the amount of insurance that's available to survivors.

So if there's going to be litigation, it should be a broader process. So we think that it makes sense to have some calm, exchange information, get into mediation, exchange information in mediation as has been the practice in many, many, many cases involving abuse and otherwise and, if

necessary, we can always come back to court to litigate matters, but we have to try the resolution process first.

THE COURT: So I hear you -- thank you, Mr. Scharf. I hear you saying with Mr. Donato's clarification that the mediation would be global in nature.

MR. SCHARF: Yes.

THE COURT: The Committee is working -- would be working toward an order on consent with the Diocese to refer the matter to mediation --

MR. SCHARF: Yes.

THE COURT: That's what I hear you saying.

MR. SCHARF: Um-hum.

THE COURT: Okay.

MR. SCHARF: And we've settled cases through mediation. It's been through -- look, the Diocese of Rochester is the first New York case to have a Chapter 11 plan on file. It's a joint plan between Committee and the Diocese. It resolves every issue, except for one insurer. We didn't get there -- we got there through mediation, intensive mediation. But at times it was coupled with litigation when it was the right time to couple it with litigation. So there's a time and a place for everything.

THE COURT: But let me anticipate something I'm supposing I'm going to hear from the insurance companies is that in order to ascertain the scope of the Diocese's

liability --

MR. SCHARF: Um-hum.

THE COURT: -- to determine whether we think a claim should be paid and, if so, what the appropriate value for that is --

MR. SCHARF: Um-hum.

THE COURT: -- we need information, which may be in the form of documentation, may be in the form of deposition. You can frame that as defending litigation or you can frame it, characterize it as trying to ascertain the scope of liability, the extent of damage and, therefore, the appropriate settlement amount.

So how do I -- you know, isn't it just a matter of what we're calling it?

MR. SCHARF: I think those things can be done through mediation. Let me just take -- let's take a case example. I'm going to make it up. I'm just making up facts as an example. Let's -- or hypothetical, if you like. We all liked those--

THE COURT: Sure.

MR. SCHARF: -- in law school and as lawyers. So let's say, you have a case. You have survivor John Doe files a proof of claim with the quest -- and includes a supplemental attachment. He will -- John Doe will say he was abused by a certain abuser. It occurred at this parish, at school. He'll put in the dates.

Now, remember, some of these people were abused when they were five years old. They may put in approximate dates. They may put it in, it was during the school year when I was in first grade. And then we will have to figure out if a policy starts in October which side of the coin are we on. So that's part of the issues that go into the mix, like which policy does it apply to, but they'll put in some date.

And when they put in an approximate date the insurance company will come back to us and say, can you fine-tune that for us, please, and state court counsel will meet with their client, try to work with their client, see if they can fine-tune it. So they'll -- then he'll say the facts of the abuse and perhaps the number of times that he was abused. And we will then use that information to look at the appropriate what we call slotting the insurance charts and we slot the insurance.

You know, they'll be a -- Mr. Murray, who is -- do you guys include the coverage chart in the complaint?

So Mr. Murray, who is counsel to the Dioc -- insurance counsel to the Diocese prepares a chart and it goes year by year and it says, here's a primary layer. This year is this insurance company. There's an excess layer above it. And Mr. Murray issues the insurance company and the Committee will go and try and say, this is our view of the amount of number of claims that hit this policy, the amount that this policy is

responsible for, and we'll make a demand based on that. They'll respond. They'll say, we have some questions. And the give-and-take of that process goes through the rubric of the mediation.

A lot of folks are approaching these cases now as massive mass tort cases. These are not mass tort cases. There are a lot of claims in these cases. There are 125 cases asserted against the Diocese prepetition. There will probably be some more. People may come out of the woodwork.

But that is a really manageable number of claims. These are not tens of thousands or hundreds of thousands of people who are asserting asbestos claims because they worked in factories, so this is a manageable number of claims to address through mediation process at first and, if necessary, move to litigation. But I would expect they will come -- the insurance companies will come back asking for clarification.

They may come back and say, I want to understand why the Diocese is liable for this person, who was not a Diocesan employee, or something. The facts will differ and we'll try to respond to that in mediation in an organized way. That's all.

THE COURT: Thank you, Mr. Scharf.

We'll be hearing from the insurance carriers.

MR. HABERKORN: Yes, Your Honor. Good afternoon, Your Honor. Adam Haberkorn, O'Melvenly & Myers, on behalf of Century Indemnity Company.

THE COURT: So am I reinventing the wheel or building a better mousetrap? Which is it?

MR. HABERKORN: We like to this better mousetrap, sir.

THE COURT: Okay.

MR. HABERKORN: So starting with the mediation motion, first, I appreciate Mr. Donato's statements again. It seems in reality with regards to the documents we're requesting fundamentally there are no issues between us. We both agree what needs to be provided, what -- and it needs to be provided ahead of mediation. And I also appreciate the clarification on the timeline of mediation. That was helpful.

Our objection -- the bottom line is Century, as Mr. Donato noted, hasn't been involved in these before. We haven't worked in these last three cases and it's -- experience unfortunately has taught us when you simply rely on promises you're going to get burned. So the purpose of our request is simply to memorialize, document the requests, what documents are going to be produced and when, so we have some certainty. So I can go back to my client and say, we got the 2004 order or there's a stipulation or something that we can point to and say, this is what will be produced and when and we'll be ready for mediation.

The objection asks in the mediation order inextricably entwined with our 2004 motion, so I apologize if I

bleed over into one of the other. We're asking for the production of three categories of documents. First, the set of complaints, as well as a list of those complaints; copies of the documents produced to the Committee and if subsequent documents are produced that they also be produced to us; and then discovery documents from the tort trials, at least the two that have gone far enough into discovery to have document discovery and depositions that should be produced. It just -- since they've been produced, the abused plaintiffs we're asking that it be produced to us as well in preparation for mediation.

It's quite simple. Asking for a level playing field. I think everyone is in agreement. The only way you're going to have a meaningful, fruitful mediation is if everyone can show up prepared and ready to negotiate. Nobody, and I mean nobody, wants to negotiate with their feet in mediation. We've heard numerous times mediators can be very expensive. It doesn't make sense to go in unprepared and walk out.

All of these documents that we're requesting, they're relevant to plan confirmation and the claims allowance process. These are bedrock issues that the Diocese is asking to have discussed in mediation, have decide in mediation. Without them, the insurers, Century and the other insurers, we will start miles behind everyone else before the foot race even starts.

Importantly, this -- these requests don't pose a

burden on the Diocese. We're simply asking for copies of documents already produced, copies of the complaints they already have in their files, the copies of any documents they produced to the Committee. As far as we're aware, these electronic copies, these virtual data rooms, we just need access to those or forwarded the same copies. That's all we're asking for and delaying production of these documents will delay mediation becoming fruitful.

And one clarification before I wrap up on this point. We do acknowledge that both the Committee and the Diocese have mentioned confidentiality agreements and protective orders and we are fine to -- for any physical document, we understand that needs to be subject to a protective order, a confidentiality agreement certainly before they can be produced.

On the 2004 motion, in the Diocese's reply I just wanted to respond to a couple points, if I can.

THE COURT: I'll come back -- we'll call that in just a minute --

MR. HABERKORN: Of course.

THE COURT: -- if that's okay. All right.

On the mediation motion, if I enter an order clarifying that the mediation is global, establishing a process to select a mediator, including a deadline and Mr. Donato, I believe, proposed the October 25th as the deadline, and making it clear that the entry of the mediation order is without

prejudice to any party's right to -- I was calling it an escape hatch -- seek to exit mediation and/or bring to my attention on an expedited basis an issue where I could be helpful to -- you need me to resolve to facilitate mediation.

If I enter a mediation order with those parameters, I hear you saying that that works for you and that's a process that you're willing to move forward with?

MR. HABERKORN: We are also asking for a documented deadline for production of the documents we've requested within the order itself. Either that or the formal 2004 order.

THE COURT: Okay. All right. Well, since we're there, okay, so --

MR. HABERKORN: And --

THE COURT: I hear the debtor saying, your 2004 exam motion is procedurally improper and practically premature. We've done this. We'll do this. We don't need to be going down this road.

So what if I enter the mediation order, adjourn your motion for a 2004 disclosure to November 7th. At that point you should have a mediator selected and hopefully, the Diocese can demonstrate and outline for you a timeline for disclosure or identify -- you can identify issues where you have disagreement about the scope of disclosure and then you report back and see where you are on November 7th. I mean, it seems to me like there should be some sort of -- and I realize there

were preliminary discussions, but some sort of meet-and-confer about this before it comes to me saying, you know, enter an order setting those deadlines.

MR. HABERKORN: Understood, Your Honor. I would have to confer with the other parties that have signed onto the 2004 motion, of course.

THE COURT: Yes.

MR. HABERKORN: But I hear you and we will certainly consider it.

THE COURT: Okay. Thank you.

MR. HABERKORN: Thank you, Your Honor.

THE COURT: Anyone else want to be heard on the -- this is the motion for mediation?

MR. BUCKLAND: Good morning, Your Honor. This is Brad Buckland for Underwriters at Lloyd's. I apologize I didn't get a chance to identify myself for the record earlier.

We had filed also an opposition to the stay of the adversary proceeding and I was -- wondered if the Court would like to hear argument on that or, you know, if that is going to be addressed in the order.

THE COURT: Yeah.

MR. BUCKLAND: I wasn't quite sure if we should continue to discuss that or not.

THE COURT: Right. No, I -- please do because I would consider that to be part and parcel of the order granting

mediation would be that the adversary would be stayed pending the outcome of the mediation. So go ahead, Mr. Buckland.

MR. BUCKLAND: Okay. Our position would simply, not to belabor it, but that the adversary proceeding should not be stayed at this time and to continue on as planned. If there is a subsequent document production, things are moving on, you know, as a matter of course, and the parties wish to renew the stay, I think that would be another matter but we just believe it is premature at this point when we have no information, no documents to produce, you know, and we'd like to continue on with it until we're in a posture to mediate.

THE COURT: Well, let me anticipate something Mr. Donato would say quite vigorously. We've done this before. You can rely on us to have -- we will produce documents, we will do this. There's no reason to have people putting in answers and motions and serving demands for production of documents in the adversary if you're worried about our ability to successfully participate in mediation, look at our track record. And if we don't follow that track record, then you have the right to come back before the Court.

So what say you to that?

MR. BUCKLAND: My response would largely to be -- to echo the comments of my colleague, Mr. Haberkorn. You know, that our concern is just to be relying on promises. And we would rather be in a posture where if the documents are

produced timely, as is the plan, and perhaps a new motion to stay the proceedings could be raised, but until that time comes we just -- we don't see a need to delay the litigation on that side. And we think it'd frankly expedite, you know, reaching the point where the parties are ready to mediate in this proceeding.

THE COURT: Well, isn't the reason to stay the adversary, though, to avoid the effort and expense of having to comply with the deadlines of the adversary while mediation -- I mean, to me, there seems to be a re -- I understand your concern. That concern, seems to me, to be able to be addressed readily with the escape hatch I'm talking about. So if the document disclosure and information exchange is not proceeding with appropriate speed, you're going to have the right to be heard on expedited notice as to why the mediation shouldn't be terminated and the adversary moved forward.

Why would we not do that, as opposed to having a set of deadlines that we're hoping we're not going to have to follow, but we kind of do have to follow because they're still technically pending and we're spending time and money doing things we might not have to do?

MR. BUCKLAND: Okay. So if I understand the Court correctly then without, you know, stating the exact language there will be some indication in the order that we will be able to move for relief on an expedited basis if we are nearing the

mediation date and we don't have sufficient information?

THE COURT: Yes. Yeah, I'm not looking to send you all off to mediation, hey, check back in in a year and let me know how it's going. I'm looking to send you off to mediation with the expectation that everyone is going to do their level best to move this forward in an appropriate way. And if anyone feels as though that's not happening, they're going to have the right to be heard back here on an expedited basis, either if it's in the nature of compelling activity or terminating the mediation and putting some deadlines in place for the adversary or the case more broadly.

MR. BUCKLAND: Okay. And another question, just so I understand the scope of the ruling, I know that there's been discussion of a deadline by which to pick a mediator, but is the Court also contemplating a deadline for the initial mediation session and the order following today or is that to be addressed at another time?

THE COURT: My inclination -- I'm open to being persuaded otherwise. My inclination is that's something that you should try to work out in the first instance with the mediator that -- and if you want a built-in report back, we're going to have -- we're going to have a natural report back. I think I'm inclined to adjourn the motion for the 2004 exam to November 7th, so we're going to have a natural report back at that time and you can let me know whether you've come to

agreement on an initial date for the initial mediation session.

MR. BUCKLAND: Okay. Understood. Thank you, Your Honor.

THE COURT: Thank you, Mr. Buckland.

I do have an attorney here looking to be heard. Sir.

MR. SCHAPP: Hello, Your Honor. Jon Schapp on behalf of Wausau Insurance.

To answer the question, we're okay with the stay as long as there's this escape hatch that you've described numerous times already and the case should go to mediation. I heard a lot of -- I heard all of what Mr. Donato said. I agreed with most of what he said here today. I don't think there's been a lot of hysteria from my part that he's talked about.

And, you know, there's talk about insurers wanting to delay the case. That's not true. It's never true, in my experience. I'm not looking to delay this case. I'm not the one who has already asked for, with no consultation with us, to change the date of the proof of claims. Judge, that's the beginning. The date the proof of claims are submitted. We get that. We heard Mr. Donato describe the process that they'll work on the claims, let us know what they think which of these claims and how they fall within our policy period and what they think we're responsible for.

That's the beginning of the process and I believe

Mr. Donato used those exact words, the "beginning of the process." And now we're talking about moving that date several months into the future and yet, we're supposed to start some sort of process now. We don't have any documents. We know there's going to be a dispute about the documents. Frankly, I'm happy to await what they provide and then we can talk about that, but I've already spoke to Mr. Sullivan about some of our concerns about the documents. I know there's going to be a dispute. Whether that dispute rises to the level of something we want to bring to the Court to have resolved, we don't know. We're willing to wait. Let's see what we get. Let's see if we have enough to start the process or not.

But as we sit here today, we know we're not going to for several months and if Your Honor sets a bar date of January, the one thing we know is we're not going to have a proof of claim before the last day.

THE COURT: Well, let me --

MR. SCHAPP: I mean --

THE COURT: Let me interrupt you. And I realize we're bleeding into the bar date motion, but that's fine. So I'm going to -- I'm going to anticipate I'm going to hear from Mr. Scharf and Mr. Donato. Look, this is different. This case is different. We have 124 cases, plenty to keep us busy between now and January giving you documents and information that you'll be relying on those 124. We don't expect the

universe to change materially because of the circumstances of this case, so why not error on the side of caution and give us time to make sure that everyone that, you know, would potentially be interested in notice gets notice. So what say you to that?

MR. SCHAPP: I understand. My concern is, to go back to what I just said, that's the start of the process. Once we get the proofs of claim --

THE COURT: What -- no. The start of the -- you would be getting document disclosure and mediation would be going throughout the entire -- so you are correct in that the universe of claims is not fixed until the bar date, but that doesn't mean that there is an empty universe in the meantime. The universe is populated with at least 124 heavenly bodies that you can dis -- have document disclosure of.

MR. SCHAPP: Well, and going into the bar date motion, we have -- we need the information that's in the proof of claims supplement --

THE COURT: Fair enough.

MR. SCHAPP: This is the beginning.

THE COURT: That's true. That's true.

MR. SCHAPP: That's the problem, Judge. And while it's great if we get documents before then, we really -- we don't know what we have and what we don't and we don't know what we don't know at that point --

THE COURT: Fair enough.

MR. SCHAPP: -- until we have that. That's our concern, Judge.

THE COURT: I got it.

MR. SCHAPP: We certainly agree with the concept of mediation. We agree that the case should be stayed subject to what has been discussed already, but we don't know what we don't know. And moving the bar date and putting us so far down the road with that process just delays the case.

THE COURT: Thank you.

MR. SCHAPP: Just delays our ability to put some money up on the table.

THE COURT: Thank you, Mr. Schapp.

Anyone else wish to be heard before I go back to Mr. Donato on the motion to refer to mediation?

MR. WEISS: Yes, Your Honor. This is Matt Weiss on behalf of Interstate Bar & Casualty. Just wanted to state our position generally.

We, of course, support the mediation. We join in the limited objection that Century put together on the issue. I'm primarily relating just to the documents.

We support the idea of the escape hatch. I think it needs to be pretty broadly worded to ensure that, you know, basically every party's rights are unaffected by the entry of the mediation order. I just want to note -- I mean, I know

that we don't dispute -- you're the gatekeeper with respect to these issues, but certainly on withdrawal to the reference, which we're not saying we will or won't seek to do today, but I mean, obviously I think that would be a decision of the District Court, in any event. So, you know, we wouldn't want that affected.

On the documents issue, you know, we -- in the 2004 I think we really sort of a backup, we wanted to raise it with Century in connection with the mediation. But to the extent we needed to pursue an affirmative relief, that's why we filed a separate motion.

Obviously, having our prep -- these are basic documents. These are documents we'd be entitled to. In any event, they've already been provided to the Committee or state court plaintiff's counsel.

I mean, ideally we -- you know, that would be part of the mediation order but, you know, certainly if you're inclined to just push the 2004 a couple of weeks, hopefully we can get them before then, but if not, then, you know, we can address it as needed.

And then the last thing I'll just say is that, you know, obviously I think I say probably for all the other insurers, I would assume, but certainly for Interstate, you know, we want to be involved in the selection of the mediator. You know, as debtor's counsel mentioned, they'd already gotten

a potential name from the Committee. You know, we've been in -- we're in a lot of these cases. It's certainly more beneficial to the case in the mediation when the Diocese counsel consults with the insurers in the selection of mediator. Not saying that debtor's counsel either has or won't, but just putting it on the record, you know, we want to be involved in that process and, you know, maybe even if there's a, you know, direction for the debtor's counsel to consult all parties in selection of the mediator in the order that could be constructed as well, so just thank you very much.

THE COURT: Thank you, Mr. Weiss.

Anyone else wish to be heard before I return to Mr. Donato?

(No response.)

Thank you.

So Mr. Donato, I hear order on consent, global mediation process to select a mediator or bring that to my attention by October 25th and then escape hatch language. Obviously, if the parties reach a point where you're, you know, engaging in sword play over words, you submit the dueling orders to me and I'll -- and I can sort it out. Do I have that right?

MR. DONATO: Of course.

THE COURT: Okay. Thank you.

So motion granted, order on consent to be submitted.

We'll look to you for that, Mr. Donato. As I indicated, please circulate it amongst the parties in interest and then if you're not able to reach agreement, let me know and submit the various versions and I'll sort it out.

MR. DONATO: Explain, Your Honor. Are you going to adjourn the 2004 motion to --

THE COURT: Yes, unless anyone wishes to be heard, my inclination is to adjourn the 2004 exam motion to 1:00 p.m. on November 7th. Mr. Donato, you can go ahead and show the parties you're as good as your word and begin that production of documents or outline a process for doing so. And then, you know, we'll hear back on the 7th in terms of, okay, we have a mediator. We are pleased or not pleased with the plan for disclosure of documents and the mediation timeline.

Mr. Sullivan, did you wish to be heard on that?

MR. SULLIVAN: Yeah, Your Honor, I do want to -- Your Honor, I just because the 2004 motion and I completely understand where the Court -- and I think that makes good sense to adjourn that application, Your Honor. I want to point out to the Court a couple of things. We've mentioned a confidentiality agreement, confidentiality protocol. Committee counsel was good enough to prepare a version of the confidentiality agreement. I'm confident we're going to get there. We're going to have that resolved.

We have circulated a draft of the confidentiality

agreement to the carrier counsel. Haven't gotten any responses from them yet, but they've got it. What we'd like to do is get that signed, assembled and submitted to Your Honor so that they can be so ordered as protective orders. That all would, of course, happen before we start producing documents.

I also wanted to address a point that was made by Century that all of this stuff that they've asked for has been produced already. It hasn't, Your Honor. There's one category of documents in their proposed document demands which hasn't been produced to the Committee and is not -- if we were to be able to produce them, they would have to be reviewed for privilege, they would have to be reviewed for document -- I'm sorry, victim identifiers. And that's all of the information that -- you know, one of Century's requests is they want copies of everything that has been produced by plaintiffs and defendants in the CBA actions.

Your Honor, respectfully, that was the stumbling block to a lot of the discussions that led to this motion. Those are the subject of individual protective orders in all of the state court actions. And we're still sorting through whether or not the terms of those protective orders in any way limit our ability to produce this.

And I'll note, Mr. Schapp discussed production in the other cases. That's not a request we've seen in any of the other cases. It is largely duplicative of the abuse files, we

believe, that have otherwise been produced to the Committee. But we had not yet made a determination about whether or not we're able to produce those things.

So I wanted to clarify that this is not a matter necessarily of pushing a button and all of the stuff that Century has cooked up in its demand is immediately available for production. I just want to make that clear.

THE COURT: Okay. Let me say that then. Let me clarify. I'll adjourn the motion to 1:00 p.m. on the 7th. But if the hold-up is the confidentiality piece, I want someone to send a letter to the Court asking a 105 conference. I do not want to get here on November 7th and say, we aren't turning anything over because we're still fighting over the confidentiality.

MR. SULLIVAN: Yes, Your Honor.

THE COURT: That's not going to be acceptable. So I will -- if the issue is confidentiality and you're still working on that, you know, next week, week after next, I want someone here sending me a 105 letter and we'll put it on right away for a conference --

MR. SULLIVAN: Yes, Your Honor.

THE COURT: -- so we can sort that out.

MR. SULLIVAN: Yes, Your Honor.

THE COURT: Thank you.

So motion to refer mediation granted. Order on

consent to be submitted. Motion for 2004 exam -- why don't you just call that, Carolina, and then we'll adjourn it. 138.

COURTROOM DEPUTY: Docket No. 138, motion for 2004 examination filed by Century Indemnity Company.

THE COURT: That motion is adjourned to November 7th at 1:00 p.m. for the reasons previously stated. Okay.

COURTROOM DEPUTY: Judge, also for the two consent orders --

THE COURT: Yes.

COURTROOM DEPUTY: -- for the mediation.

THE COURT: Yes.

COURTROOM DEPUTY: It's two orders, right?

THE COURT: Yeah.

COURTROOM DEPUTY: One for the adversary and one in the case?

THE COURT: I'll clar -- we'll clarify that and let Mr. Donato know the format and everything.

COURTROOM DEPUTY: Okay.

THE COURT: Thank you. I think we're ready for the bar date motion at Docket 75 in the case.

MR. DONATO: Thank you, Your Honor. I think this is --

COURTROOM DEPUTY: Docket No. 75 --

MR. DONATO: Oh, so sorry.

COURTROOM DEPUTY: -- motion to set last day to file

proofs of claim.

MR. DONATO: Thank you very much. Sorry for interrupting you.

I do think this is the last motion. This is Docket No. 75. And this is the claims bar date motion filed by the Diocese.

THE COURT: Let me just give you some preliminary thoughts to guide your presentation, Mr. Donato.

MR. DONATO: Um-hum.

THE COURT: Let me look -- just get my document first. Okay.

So I understand the tension on the one hand between keeping the barrier to claimants low given that we may have pro se claimants and we may have many claimants for whom participating in the process of preparing a proof of claim is traumatic and might be seen as a re-victimization for them.

So on the one hand, we want to be sensitive to that and keep the bar low enough that claimants with claims are able to understand what they're being asked and can provide -- are not unduly burdened by this process and thus, disincentivized to make a viable claim.

On the other hand, we also want to create a process that doesn't encourage filings that are not appropriate and that creates a process that facilitates the sorts of information that the parties need to move this forward

expeditiously such that if we have a large volume of claims with limited information about the nature of those claims, we're going to spend a lot of time and money trying to separate the wheat from the chaff and get a better understanding on what these claims are and what compensation might be appropriate for each person.

So how do I -- how do we balance those two concerns?

MR. DONATO: I'm happy to address it.

Just to cut right through it, as I've indicated, we've done this with different courts in settling. And I would respectfully refer to the Diocese of Syracuse bar date order. That bar date order contains -- and let's specifically talk about -- let's kind of cut right through it -- is the ACS, the abuse claim supplement. All right. Everybody knows you've got to file a Form 410. You've got to do that.

You know, the Committee would like it to be very loose about filing the supplemental claim form, which is a complete 180 compared to the Committee's view in other Diocesan cases, which is kind of interesting, and they tell us why. They said they don't want the abuse claim supplement form to be used if there's any claim objections.

THE COURT: Well, I --

MR. DONATO: Let me explain.

THE COURT: Yeah.

MR. DONATO: In Rockville Center there were a serious

of claims objections filed by the Diocese and the basis for the claim objections was the Form 10 proof of claim and the supplemental claim form. They're not shy about this. The Committee is saying they don't want to use any information in the supplemental form.

THE COURT: Oh, I --

MR. DONATO: And that's -- I mean, that doesn't make any sense.

THE COURT: Well, they're saying -- you're saying the reason we are, and the insurance company is saying the reason we're requiring an abuse claimant to offer -- provide more information than a slip-and-fall claimant would need to provide to have a claim -- a valid claim, the reason we're doing that is because we want to be able to move this forward in mediation and get it resolved expeditiously. So the reason you're ask -- you're imposing this burden on them is to facilitate mediation.

So I hear the Committee saying, fine, then give us the protection that's afforded to mediation privilege, documents and information exchanged in mediation is exchanged for that purpose. So why is that not an appropriate quid pro quo?

MR. DONATO: Because it's never been done before. It's never been done. I've read every bar date order. Never been done before. What that is -- first of all, let me take a step back. The Diocese has the utmost compassion, sensitivity

to the victims, to the survivors. That's what they like to be called, the survivors. There's no question. The Diocese has it. That's why they filed this case. They want to ensure a fair and equitable distribution. If they didn't do that there'd be three CBA actions, judgments. The first three people would get judgments, the Diocese, the parishes would close down, the Catholic -- you know, it'd be over. So everybody knows why a Chapter 11 case is filed and that's to ensure, if at all possible, the fairest and most equitable treatment; not the first two people that race to the courthouse.

THE COURT: I understand.

MR. DONATO: Okay. So that's our overall goal. And we have the utmost sensitivity. The Bishop has apologized, will continue to apologize and is very, very sincere. We talk about this all the time.

THE COURT: But the issue here is not the sentiments of any party. It's what is the legal protection being afforded to this information.

MR. DONATO: Exactly. And so when a creditor, no matter what kind of creditor comes into court, when a creditor files a proof of claim, that implicates a process under 301 where claims are reviewed. As you know, they're allowed until objected to. We're not saying we're going to object to claims, but it has happened.

What the attempt here is to actually remove a total from either the Diocese or carriers in the event there are false claims, in the events there are and we're very sensitive. We haven't filed one proof of claim objection in any case that questions credibility. We have said your claim is against the Methodists, not the Catholics. We have said, you're suing a clerk that was not under our jurisdiction, you know, those kinds of things.

All I'm sharing with is this new idea of commingling, it was not done in Santa Rosa. I was told it was. It was not. It was not done in Oakland. San Francisco hasn't had it yet, so those are your most recent cases.

THE COURT: Just because it wasn't done doesn't mean it's not proper. Why is it --

MR. DONATO: I understand that. But what it's doing is it's turning on its head the claim allowance process under the Bankruptcy Code. Yes, these are sensitive cases. Yes, the facts are very sensitive. Everything is 100 percent confidential. There's no issue about that.

But if it turns out at some point that the review of the claims -- make it up. Say, there's 100 -- say, there's 190 claims that come in. Okay. And that's going to raise a whole bunch of different issues, right, because 124 -- let's say, we have 190 and we look at those claims and some of those, frankly, are made up. Okay. The Diocese should have the right

to process claims in accordance with the Bankruptcy Court.

This is -- what's going on with the Committee's attempt to take the proof of claim form and make it subject to mediation privilege is to cut off the ability to make an objection to the details set forth in the claim. That's inappropriate. We are sensitive. We're not filing claim objections, but that's what this is. This is why it hasn't been done before. This is an end around. What happened in --

THE COURT: So --

MR. DONATO: -- in Rockville Centre is there was some claims and Judge Glenn got interested in those claims and some claims were either directed to be amended or disallowed and now the state court counsel said, don't forget what had happened. So now we need to cloak everything into mediation privilege. That's what this is about.

THE COURT: So your -- the scenario you're envisioning is someone files a proof of claim and on the abuse claim supplement they say, I was a victim of abuse in the Diocese of Omaha and you want to say, well, wait a minute, objection, this is -- you're not -- this is not even in the right place but, oh, no, now I can't use the abuse claim supplement so now, what, I've got to do a 2004 exam to get that person to say they were in the Omaha and not Ogdensburg, which we all knew anyway, because that was on the abuse claim supplement? Is that the scenario you're --

MR. DONATO: That's exactly correct.

Now, my adversary will say, no, no, you'll get a lot of information in the Form 410. No, you won't. Everybody knows the Form 410 settle more for commercial-type claim. You know, you look at your promissory note, you owed 100 bucks, you attach it, I got a security interest, you know, just road kind of stuff.

These are unliquidated claims. They're personal tort claims. No criticism, but this isn't the kind of claim you just file and say, I owe $62, you know, in the little preprinted, you know, spot for the answers. The supplemental claim absolutely needs to be used.

We are not saying that you use a supplemental claim and if you don't, the claim is disallowed. Not saying that. In Syracuse, we went around and around on this issue. Now, my adversary was not the Pachulski firm. It was the Stinson firm. The way it works around the country is either Pachulski or Stinson gets the Creditors' Committee cases. Once in awhile Lowenstein. Sorry, but our adversaries were Stinson.

What we agreed to, and that's why I'm asking the Court to specifically look at the language, what we did, was the language in the Syracuse proof of claim form says you file a 410 and a supplemental form. Encourages you to file it. But then it says, your failure to file the supplemental claim, not the 410. Everybody knows that if you don't file a proof of

claim, right, that's --

THE COURT: Right.

MR. DONATO: If you don't file the supplemental, your claim may be dismissed. Something -- you know, that kind of language. That is not pejorative. What are we doing? It's worked. We settled cases in our other Diocesan cases because the insurers and the Diocese got enough additional information from the supplemental claim form it would have settled to have -- and I agree -- to pay the Diocese. It works.

This is a new attempt. The reason -- the purpose is not, yes, it's protecting the victims, but they're already protected. Everything is confidential. Everything at ACS and the 410 is confidential, right. This whole motion talks about the confidentiality protocol ensuring that everybody is protected. That's fine.

But what this is, is this is an end around. What this is, is an attempt to gut the proof of claim review and allowance process. It is not necessary. The mediation privilege, of course, if they get that, then that bars our ability to even raise the issue that your claim is against the Omaha Catholic district Diocese, not the Ogdensburg Catholic Diocese.

THE COURT: So if the abuse claim supplements are critical to trying to be able to solve the matter through mediation, so critical again that we're going to impose this

requirement on abuse claimants that would not be imposed on a slip-and-fall, why then are we waiting until the end of January to get all of those proofs of claims and abuse claim settlements? Why would we wait that long? Because I mean, I understand you have information --

MR. DONATO: Yeah.

THE COURT: You can be disclosing documents, but as a practical matter, you know, we know -- we sort of know some stuff and there's stuff to keep us busy, but the actual universe of claims with that additional information, we're not setting that until January. End of January. Then someone needs to sift through all that and so what -- why the -- why the -- and again, I'm balancing here. I appreciate the need to make sure that people have adequate notice. I appreciate that, but I also want to move the matter forward. So why the -- why were you originally proposing later this month and now proposing January, other than just trying to, you know, go along with the Committee?

MR. DONATO: Well, we were proposing November 23, just so we --

THE COURT: Okay. Thank you. Yes.

MR. DONATO: -- know, so it wasn't supposed to -- I know, Thanksgiving, but --

THE COURT: Right, right.

MR. DONATO: Excuse me, sir, again. The Committee

requested it. We worked well with the Committee. If there's a -- if we make it, you know, January 7th, if we make it December, you know, 20th, we're completely fine with that. We don't want to do, right? The Committee -- we are adversaries. We are very strong, professional, you know, communications and courtesies. I didn't even try to negotiate. Be completely -- if the census -- let's do something between November 23 and January 18. We are fine with that. Okay. But I did -- little -- he wrote and called me and said, if you think January 18 is the day that's not a hill that we're going to die on, if you think that's appropriate. If it turns out that it's a little bit shorter than our standpoint, it's completely fine. That is the exact reason why we nudged it from the 23rd to the 18th of January.

And also, to be fair to myself, when we filed our motion we ended up adjourning them for about six or eight weeks to allow to catch up and some of those dates did seem a little bit crypt. So we're kind of jumping around here. I guess the first piece of the Committee response is that, you know, make -- they're stepping away from the abuse claim supplement, you know, and I don't know why. I mean, I think it's because they say the claim objections --

THE COURT: Well --

MR. DONATO: -- in other cases.

THE COURT: -- let me stay with this for a minute.

So the first question I have is, should the abuse claim supplement be mandatory. And by "mandatory," I mean, that there would be some sort of automatic disallowance of a claim without -- if the abuse case on that was not contained thereon and --

MR. DONATO: And that is not our position.

THE COURT: That's not your position and --

MR. DONATO: Not our position.

THE COURT: -- and the Syracuse disclosure, I think Albany had a similar, was something along the lines of you should file this. If you don't, some -- I've seen variations between either your claim may be subject to objection or in what I consider to be sort of maybe preferable or layperson terms, it says, you may not be able to vote on the plan or participate in distribution, which I think makes it clearer that that's a potential consequence.

MR. DONATO: And I think that's a great idea. It's -- so the Syracuse language -- and by the way, Albany is different than Syracuse, significantly different because in Albany they don't talk about the failure to file the supplemental claim. Okay. I've read every one of them and I recall debtor's counsel. That one says, if you don't file a proof of claim -- you don't file a 410 your claim is subject to disallowance. And I laugh because -- okay, add a new sentence to that.

So what Syracuse says is all claimants shall submit proofs of claim in substantial conformance with official Form 410. Any proof of claim asserting a sexual abuse should be accompanied by the completed, you know, abuse claim supplement. Then most important, and it's in black -- you know, bold language and, again, I have no problem if we modify it, but it says, the failure to submit completed abuse claim supplement. That's what we're talking about, not the proof of claim. All right. With any proof of claim asserting the sexual abuse claim may be the basis for a valid objection to such claim. I know exactly what you're talking about because I read them all. Some of it says, you may not receive payment under a plan, or something like that.

THE COURT: Right.

MR. DONATO: And maybe that's a better way.

But this is the kind of thing. We shouldn't be stepping away from the supplemental claim form. We -- come on. We're not -- if creditors, we have the sympathy. We have it, but if you're going to submit a claim for money on a personal tort with seven or eight carriers, right, so you've got all conflicting kind of things, we've got to know when, where, how, et cetera, and we need as much detail as possible.

Now, I'm not in agreement with the carriers asking for additional questions. Okay. And this is -- so we're kind of sliding from that. We think that the ones that we hammered

out in Rochester and then refined in Syracuse, so we started in Rochester. It was the first case that we filed. By the way, we did that with input. Had input from all the carriers in creating the claim form. There were prior forms, but we added certain things to it. We were fine and Syracuse has all of those questions set and we think that's a proper balance. It's about six pages and the actual substance is about two, you know because that's the nature of the claim piece in the supplemental claim form. All the other stuff deals with confidentiality and things like that. We think that that's a real good balance. I know we'll let the carriers argue that they want other information, maybe make a determination to add a question.

The Committee's response agreed with me. Everything in our claim, except for the last question, which was, have you received any payment in a different case, I would submit Judge Cangilos, Kinsella, they've been through this. They vetted all of this and I would respectfully submit that's a good balance because, again, we're not taking a position. If you don't submit your supplemental claim form, your claim is denied. I think carriers might, but we are not doing that.

THE COURT: Are you -- and maybe you're not --

MR. DONATO: -- doing that. We are trying to be sensitive.

THE COURT: -- in a position to say this or not, but

I looked at the orders and the abuse claim supplements out in Minnesota and the insurers are saying those asked for very extensive disclosures on the part of abuse claimants. Is there any sort of lessons to be learned from there? I mean, and I think that representation was that those matters were successfully mediated. Is there -- are any lessons to be learned about whether that we think that discouraged claimants and/or on the flip side whether getting that information facilitated the -- but you should -- having said that, I also find it interesting that the order -- the abuse claim supplement in Syracuse is similar to the order you're -- the settlement you're proposing here. And I don't see lots of claims objections on the docket and I don't -- I'm not -- don't believe that the hold-up in mediation is, well, we just don't have enough information because the abuse claim supplement wasn't sufficiently comprehensive.

MR. DONATO: I think that's exactly right because it works. You've got to give a little bit more information. Again, these are tort claims. They're unliquidated. What happened? How did this occur? So, yeah, that's exactly right.

I can't answer your question directly about Minnesota. I didn't have direct involvement in Minnesota. I guess I would say it worked because they all settled, but things have changed as these cases have progressed.

So as far as -- most important point for us, we think

that language similar to what's in Syracuse should be utilized. We think that the supplemental claim form should absolutely be encouraged, not stepping away from it like the Committee is and not doing it, as I indicated, because they don't want claim objections. I don't think it's proper. Do not believe there's any basis to take the supplemental claim form and cloak it with a mediation privilege. I explained why that's an end around the claim allowance process. And we are fine. I know we're not supposed to be in the middle, but in this context I would say we set the template in Syracuse. We think that's a good reasonable basis and I -- as far as we're concerned, if the Court approves something in that regard, that would be more than acceptable to us and it would allow us to get the process going.

As far as the proof of claim date, I just want the Court to know, I did agree with the Creditors' Committee simply because they asked for it. If the Creditors' Committee is willing to make an adjustment or something, I don't want to pull my consent, is what I'm saying. But we are okay with that. We just didn't want to be unfair to the victims.

THE COURT: Thank you.

MR. DONATO: Thank you.

THE COURT: Mr. Scharf?

MR. SCHARF: Thank you. Your Honor, I'd like to respond. I'll try to respond to the insurer's issues, but I'd

like to reserve some time to address them if --

THE COURT: Sure.

MR. SCHARF: -- address them if they raise anything oral argument.

THE COURT: That's fine.

MR. SCHARF: Thank you. Your Honor, I do want to address a couple of things up front. One is this issue about false claims. We don't want false claims either. I read every proof of claim in every case that I work on. We have a handful of people from prisons who submit claims -- who have submitted claims in multiple cases. I recognize their handwriting and every iteration of their name at this point. Well, we try to weed out the false claims.

In addition, the state court counsel who represent survivors in this context do intake. These are not folks who are sitting there kind of call center just getting -- you know, paying $50 to get a referral for -- from a call center. They do intake. They do not want false claims filed. They do not want people to come forward who are lying about what happened. It takes away from the true survivors and it would undermine our efforts to represent an advocate for survivors.

And I'll try to -- I'll address this issue you said about this balance between what the law requires and what the case needs, throughout my presentation. I'll also start -- let me start with the date because I think that's an easy one to

explain. So the original motion was filed I think before the Committee was formed. It was adjourned to allow the Committee to review it, to get up to speed, and the November 23rd date was incidentally Thanksgiving Day. And I'll just --

THE COURT: And also, I think the day before the adult survivor --

MR. SCHARF: Act closed --

THE COURT: -- window closes.

MR. SCHARF: Right. Yeah. So there's --

THE COURT: I think it rolls to Friday because it's Thanksgiving and --

MR. SCHARF: And there's two reasons why we asked to have this moved to January. One, we need enough time to fill out the forms to get survivor -- discuss them with survivors, get signatures, have consultation, make sure the proof of claim reflects the actual survivor statements, you know, and there may be additional information that's provided. People do supplement these things.

And at the same time, that period between Thanksgiving and Christmas (a) professionals are busy, professionals take time off. We'd like to accommodate that. At the same time, that time period is incredibly difficult for survivors. Calling somebody up two weeks before Christmas because they're getting ready to meet their family or may or may not know about their abuse or may have all sorts of

lingering emotions, as we all understand about that holiday season for people who are traumatized, can re-traumatize people in a terrible way, so it has to be handled in a gentle way. And if somebody needs to wait until a couple days after Christmas to talk to their counsel, let's give them until a couple days after Christmas and talk to their counsel.

THE COURT: Let me ask you, though, do you not see the virtue? I know Judge Buckeye, I think, had this in the context of the CB -- having the proof of claim deadline correspond with the closing of the CBA window and he found that to be sort of a beneficial correspondence.

MR. SCHARF: Um-hum.

THE COURT: If we were to make it the 24th, if we were to roll it to that Fri -- November 20, for the Friday after Thanksgiving, the 24th, there would then, I think, be correspondence between the closing of the adult survivor window and the proof of claim deadline. Are there not -- does that not -- is that not a factor that would militate in favor of setting that as a bar date --

MR. SCHARF: I antici --

THE COURT: -- and -- I'm sorry. And then we're also, albeit you're -- it's the day before -- the day after Thanksgiving, you're avoiding that holiday time concern that you're raising and we're balancing that against -- we're closing the universe and getting those abuse claim supplements

in the hands of the people and you look at them so that we can move mediation forward.

MR. SCHARF: Sure. So (a), I think we have to have -- for people who may not have come forward, probably have to have more than a 40-ish day deadline just because just time-wise it will take two weeks to get documents out, printed, newspapers up and running, et cetera. So I think that just realistically the 24th wouldn't work.

In addition, Judge Buckeye entered that decision in the context of the Diocese trying to truncate the window. So -- and it wasn't contested in Rochester. But when Rochester filed, Judge Warren expressed concern about truncating the window against the will of the New York Legislature that opened the window for a certain amount of time and he ended up entering an order that made the bar date co-terminus with the window as it was originally presented. Of course, COVID extended that and he declined to extend that.

But I think that the -- Judge Buckeye's decision was driven more by this is the will of the Legislature to allow people to come forward, as opposed to just looking at fit neatly and frankly, doing something the day after Thanksgiving. It would be a burden on professionals.

(Laughter)

But no, so I think that it's that period -- Thanksgiving has the same issues as people are meeting with

their same families. Getting past the holidays is incredibly helpful for survivors.

Nobody wants to move these cases fast-forward more than the survivors do. They've been waiting for 50 years, in some cases, for their day in court and for justice. And, you know, to delay justice for an extra 30 days is something that we think would be reasonable. That said, again, as we said, we think that there's other parts of this process that can move forward before the bar date.

The other difference here is we know the complaints. We know which recent -- or which individuals have been identified as perpetrators, so you can start investigating that. We know the universe of complaints. So that's why we picked January 18th. It wasn't -- it was driven by that need to get past the holidays for some people.

So in terms of the bar date motion, there's a number of points we want to make. The first is that it has to be voluntary. It has to be subject to a mediation privilege and we want it to be limited to the questions that we propose.

THE COURT: Let me ask you first, if by voluntary you mean that there is -- do you mean it is not prop -- it would not be a proper objection to the claim? The absence of an abuse claim would, therefore, not be a proper objection to the claim or you mean that it would not be the basis for an automatic disallowance of the proof of claim?

MR. SCHARF: Both.

THE COURT: Okay.

MR. SCHARF: We very simply have to go back to Rule 9009(a) which tells us what a proof of claim form can have and it says you have to use the official form and you're allowed to deviate it, but the deviations are like ministerial kind of things. They're -- you know, or to accommodate -- you know, give people -- I'm just looking at the rule. Expand the prescribed areas for responses, delete space not needed for responses, delete items requiring detail and question of category. There's nothing in there about --

THE COURT: Right, but --

MR. SCHARF: -- adding questions.

THE COURT: But if I enter an order with language similar to Syracuse --

MR. SCHARF: Um-hum.

THE COURT: -- that says, should file, and maybe the basis for objection or may cause you not to be able to participate in a distribution, I'm not ruling -- I'm not foreclosing a claimant from making the argument that you're making now --

MR. SCHARF: Sure.

THE COURT: -- which is that my claim should not be disallowed solely because I didn't fill out the settlement -- or that is left for another day.

MR. SCHARF: I think we're making -- I think the Diocese is making a mountain out of a mole hill here. The in terrorem affect of those words for somebody who may not be sophisticated is not necessary. We want to encourage people to file these things. And believe me, if they don't file a supplement, we'll be on the phone trying to get the information because we -- when somebody just -- you know, when somebody files a proof of claim for a slip-and-fall and says, hey, slip-and-fall accident, tort claim, a million dollars. Okay. Or unliquidated.

When we represent trusts, committees, debtors, we always file a books-and-records objection to that kind of claim. We just have no basis to understand that claim.

The Diocese can still do that. It just can't -- and I'll flip to the -- let me delay that discussion. But in terms of the -- there's no need for the in terrorem affect of saying this may be subject to a disallowance, because then we're going to be here in three or four or five years and somebody is going to have not filled out their claim and there's going to be an argument as to whether or not you meant it will be disallowed versus maybe disallowed and maybe it becomes an issue with plan voting. There's no need for it. We propose language that encourages people to file it in bold.

The filing of the confidential proof supplement is voluntary, but each of these claimants is encouraged to submit

these forms. We'll send out a letter in the proof of claim package and the Committee strongly encouraging people to do this. We just don't want to have the notion that this may be subject to disallowance.

We find, frankly, in the case of -- there may be pro se people out there, there may still be adult claimants out there. That kind of language can just drive people away from filing the proof of claim form. So, you know, they may not understand how to answer a question why they're being asked a question, et cetera.

That's all I have on that topic and I can move on to the other points.

So let me move on to the issue of why this has to be subject to the mediation privilege. And yes --

THE COURT: Answer my Omaha problem. Tell me what Mr. Donato is supposed to do if someone says on their abuse claim supplement, I was abused by the Diocese of Omaha.

MR. SCHARF: We would do what we would do in any case with a tort claim. File a books-and-records objection saying, we don't understand what's the basis for this claim, and then it becomes he's filed his objection and now the burden would shift back to the claimant to supplement it.

The problem we have here is that frankly, there are different pleading standards for complaints in state court versus federal court. And in New York and when you ask --

especially when you get into some of the questions that the insurers want to ask, you're really getting into -- the main issue here is not necessarily -- it's not -- it's not -- the main issue here is not the guy in Omaha or the Methodists. The issue here is somebody at a parish or a school or a religious order that may have a connection to the Diocese.

The information about that relationship between a religious order and a Diocese is not something the survivor has access to. That information is in the Diocesan's possession, perhaps the religious order's possession, a school's possession. And so right now, when people filed their state court claims, they can assert that kind of claim and they would have to do discovery to connect the dots between -- and let me just give an example.

There's a -- let's say, there's a parish school, a school owned and run by a parish, which has a religious order nun staffing it. So the Diocese might say, we're not liable for that. That person should be entitled to conduct discovery to understand -- in state court would be entitled to conduct discovery to connect the dots between the Diocese and religious order; what's the connection to the Diocese and the parish; what's the connection between the parish and the school, the Diocese and the school, and then what's connection between the reli -- is there a contract for that religious order to operate in that school. Is there some sort of indemnification --

THE COURT: Right, sure.

MR. SCHARF: -- agreement. So having that information out there, so giving insurance companies and the defendant half the story without the ability to go conduct discovery on the other half of the source is simply unfair.

THE COURT: So your concern is the abuse claim supplement says, I was -- I'm a survivor of abuse. It happened with Sister So and So at this place. The Diocese brings a motion -- objection to claim --

MR. SCHARF: Um-hum.

THE COURT: -- saying, well, Sister So and So wasn't at this order, we're not liable, you have not fitted a prima facie case --

MR. SCHARF: Under --

THE COURT: Under --

MR. SCHARF: -- Twombly and Iqbal, right.

THE COURT: Right, right. And then you're stuck saying, why we -- I mean, discovery and I said, well, you don't get discovery. You didn't state a claim on its face.

MR. SCHARF: Right.

THE COURT: So I toss -- why shouldn't we want to be resolving -- getting --

MR. SCHARF: Well, because --

THE COURT: -- moving beyond those claims?

MR. SCHARF: So here's the problem you have and this

becomes a practical problem as well as just -- it's just a fairness issue, right? Maybe those people should be conducting 2004 examinations of the Diocese to understand their liability. Maybe they should have their state court cases go forward again -- severed and go forward as parishes to get that discovery. Right now everything is stayed. They would have other avenues of getting it.

The practical problem with this kind of objection, by the way, is let's say that the person is successful in knocking the Dioceses out -- sorry, knocking the claim against the Diocese out. They're still a claim against the parish. They're still a claim against the school. There's still a claim. And the Diocese is going to ask for a channeling injunction for the benefit of those people and now how do you put them back in the bankruptcy, the case is disallowed. So it does create a practical problem.

But fundamentally, it's just a question of fairness. If we're asking people to provide extra information to aid in mediation, it should be extra information in the context of mediation, end of story, period, full stop.

THE COURT: Thank you.

MR. SCHARF: So that's that issue.

THE COURT: Yeah.

MR. SCHARF: And finally, let me turn to the questions that the insurance companies are proposing and I will

address the one question -- I think we -- we proposed some kind of semantic changes and I think kind of not -- non-controversial changes to the proof of claim form and those were attached to our --

THE COURT: Yes.

MR. SCHARF: -- objection. There's one question, which we asked to strike, which was a question -- Mr. Donato couched it as, you know, have you settled with anybody else. I think it actually reads a little differently. It's have you asserted a claim against anyone else. That question was extremely relevant in Rochester and Buffalo and other cases where the statute of limitations had not -- and the window had not closed yet because we didn't know the universe of claims. We didn't know if somebody had actually sued the Diocese. Somebody may have submitted a proof of claim form. Maybe they sued the Diocese and maybe not. Maybe they participated in an IRCP program, maybe they inserted an informal claim at the IRCP level and we just need to know what was out there and what had gone on.

So here there was a 124 filed cases. We know what they are.

THE COURT: But doesn't that make the question more relevant, not less relevant?

MR. SCHARF: No, because it -- it's -- it was relevant to understand who was the universe being sued. So

have you -- so if you asserted a claim against the Diocese, can you give us a copy of the complaint, can you let us take a look at it.

Here, they're going to give everybody the complaints. We know the complaints, so we just don't need to ask that question, you know. It's like an extraneous question at this point. That's all.

THE COURT: But if they hadn't brought a claim already --

MR. SCHARF: Then we would know that when they filed the proof of the claim.

THE COURT: Okay.

MR. SCHARF: I mean, it just -- they have a list of all the losses, right, so we'll know at that point.

And then with respect to the insurer questions, let me address those. So the insurer questions, again, they're trying -- the problem with the insurer questions, again, they're going far, far beyond what is necessary to start the process, right? We need to understand who, what, where and when.

The insurers are asking for questions that, in some cases, require legal conclusions and some cases require knowledge that's really outside the knowledge of a survivor. And so, for example, LMI and Century proposed a couple of questions. Who at the Roman Catholic Diocese of Ogdensburg

knew that your abuser was abusing you or others? A ten-year-old that's being abused isn't necessarily going to know who at the Diocese knew about the abuse. That's a completely unfair question and, frankly, could drive somebody away from responding to the question or enter -- or filing a proof of claim if I don't know the answer. And again, our survivor group is not made up of credit managers who normally file claims in these cases. They're individuals and their level of comfort with the legal system varies. Their education level varies. Their world experiences vary and they're a traumatized individual.

So there's -- how do they know that? The answer to that question is in the files of the Diocese and the knowledge of the Diocese. It's not a question for a proof of claim form.

THE COURT: Aren't the insurers going to tell me, we'll tell you exactly where we got those questions from? It's directly tied to the applicable standard for liability on the part of the Diocese and we're trying to elicit from as many places as possible the answer to the question of, is there a basis for liability from the -- on the part of the Diocese. And some of that information may be in the possession of the Diocese. That's why we have a 2004 exam motion against the Diocese asking for this information.

And we also want to see if there's information with -- the abuse claimants have that relate to very

specifically those questions of whether there is prima facie case for liability against the Diocese which, again, they need possibly to defend the case later. But now to try to value the case --

MR. SCHARF: Um-hum.

THE COURT: -- which means ascertaining in part whether they think there's a risk of liability on the part of the Diocese.

MR. SCHARF: So they can come back to us and ask. So first, this is a proof of claim form, which by law you can't expand. This is a -- not an interrogatory. If this were a question in an interrogatory at the beginning of the case, I presume the answer would be this is information within the knowledge of the defendant and we will use discovery to discover it.

So it's -- you can't take a proof of claim form, which is not subject to objections, motion practice, or motions to compel, quash, et cetera, whatever we would do with discovery. It's a proof of claim form. Who, what, where and when. And if they need -- and then when they get the Diocese files, they'll know that there's now evidence that Father XYZ, the Diocese had notice of Father XYZ's proclivity of abuse as of this date. There'll be a letter. Whatever evidence they have. And if somebody is abused before that date, they can come back and ask us about it and they can ask the survivor and

ask the state court counsel, so there will be a way for them -- or a time for them to ask for this information outside of the proof of claim form.

So again, we don't need to throw this into an interrogatory and if we were lit -- and again, these cases are stayed as to the survivors. The survivors aren't getting the benefit of discovery. They're not getting depositions. They're -- some of the state court counsel who represent Committee members may have access to CBA files and redacted form, et cetera, but there's a lot of folks out there who are not going to get access to the CBA documents through the bankruptcy process.

So let's create a level playing field. If they have questions they want to ask, they can ask them after the proof of claim is filed after they've gotten the discovery from the Diocese and see what blanks they need filled in.

THE COURT: And are you able to speak to the question I asked Mr. Donato? We've been at this. It's not, by any stretch, the first Diocesan case filed in New York, let alone across the country. Do we have any sort of even anecdotal or systematic evidence of -- look, when we ask the types of questions that they asked in Minnesota, which is similar to the types of questions that I'm being asked to approve here, we were able to resolve things more expeditiously, efficiently versus when we make the barrier lower it becomes more difficult

to move the case forward. And again, I'm asking you about cases you're not involved in, so you're not in any obligation to say things you don't -- you don't know. I just don't --

MR. SCHARF: Yeah. I mean, the Minnesota cases also had a different dynamic in that one state court lawyer represented probably 95 percent of the survivors, so there was that ability. And I don't know what went on behind the scenes, but it's a different dynamic than when --

THE COURT: Okay.

MR. SCHARF: -- we have different people and a different group representing all the survivors.

And frankly, we've had cases where this information was not on a proof of claim form. And I have not memorized every proof of claim form. I've read a lot of them, but I haven't memorized them. But I can recall cases without breaching mediation confidentiality where we were asked, can you give us some more information about this type of -- this claim one -- you know, these quest -- certain questions about claims. And sometimes it's a legal issue. We'll respond. Sometimes it's a question of what's the notice evidence and we can respond and sometimes it's a question of what are the dates, I need to know what insurance policy we're talking about, and we can respond.

THE COURT: And --

MR. SCHARF: So all of these things can be addressed

through mediation and, frankly, they can be addressed through formal discovery, if the need arises.

THE COURT: And am I right to think that I might look at the Diocese in Syracuse and say, well, they have abuse claim supplement there? It's not protected by any mediation privilege and I don't see the docket full of objections to claim. Am I anticipating that you're going to say, well, that's because they're still in mediation and if mediation fails, your concern that we're going to get a flood of objections --

MR. SCHARF: I --

THE COURT: -- to claim --

MR. SCHARF: Yeah.

THE COURT: -- using the information on the abuse claims supplement?

MR. SCHARF: I'm not -- so let me -- can I put Syracuse to the side because I can't speak intelligently about it.

THE COURT: Okay.

MR. SCHARF: But I will speak -- I can talk about Rochester.

THE COURT: Okay.

MR. SCHARF: In Rochester the Diocese did file 60, 50 claim objections. There was then a deal with the Committee --

THE COURT: Based on information in the abuse claim

settlements?

MR. SCHARF: Yes.

THE COURT: Okay.

MR. SCHARF: And those were then adjourned. An insurance company filed claims -- 38 claims -- the non-settling insurance company in that claim -- case filed 38 claim objections. We're disputing their standing to do so, but it's a real concern. Rockville Center happened.

So before Rockville Center, we did not -- it was not an issue that we had anticipated. After Rockville Center became a different -- we're now -- we've now been educated by events in a real case where it has been an issue and cases have been -- and claims in that case have been.

THE COURT: And is there legal authority beyond what's in your papers already for me either having the power to impose that as a condition and/or the obligation to impose it as a condition?

MR. SCHARF: I think you have the obligation to impose it as a condition. Again, given Rule 9009 doesn't even allow -- so does not allow you to actually order a supplement or require a supplement or suggest a supplement. And really, if you just -- if you don't order it, if you don't allow it and the supplement is voluntary, you're going to get Form 410s filed and people will say, I'll give you the information at mediation.

I mean, we're -- we just -- there's a practical problem here that, you know, it -- I just think we can avoid by making it subject to the mediation privilege.

THE COURT: Thank you.

MR. SCHARF: And then again, you know, there's -- I'll give you a -- look, we represent a liquidating trust in an opioid case -- small opioid case. Mr. Donato represented the debtor at one point. And we got 2000 claims from an attorney and we couldn't figure out how those folks had any connection. We filed an objection, said we don't understand how there's any connection. And so there are ways to do it without having the information in the proof of claim in the supplement.

THE COURT: Thank you.

Mr. Donato, can I -- can I just -- before I hear from the insurers, go -- I -- if you need a minute, I want to ask you a question on that very issue before I get to the insurers.

MR. DONATO: There's a question I want to ask --

THE COURT: And again, just on this issue, though. I mean, I hear Mr. Scharf saying, you're up here saying, we just want the abuse claim supplement to help facilitate mediation, but I'm assuming you're going to tell me, that's without prejudice to your right to use it in a claims objection. I mean, that's why you're arguing against the mediation privilege because you believe that you want to preserve your ability to use that information to object to the claim.

MR. DONATO: There is no basis whatsoever to just cloak a proof of claim in the mediation privilege. There's no authority cited. I mean, it's -- yes, I'm agreeing with you. The whole -- this is all a -- I can't say escape hatch because that doesn't work. It's an end around.

THE COURT: No, but -- wait. What Mr. Scharf is saying is, we are deviating from the requirements under the law for what constitutes a perfect claim.

MR. DONATO: Yes.

THE COURT: Deviating materially --

MR. DONATO: Sure.

THE COURT: -- I'm going to say. We're -- and again, I'm going to say, we're requiring more of a --

MR. DONATO: Yes.

THE COURT: -- sex abuse claimant than we would a slip-and-fall. Okay. They don't have to say, did the Diocese have notice that it was an emergency, right, event. I mean, none of that, right? They just file a claim and that's that.

MR. DONATO: Exactly.

THE COURT: So we are imposing an additional requirement. You're saying to me the justification for doing that is that it facilitates mediation and, as I said before, okay, I get that. Well, if that's the reason, if that's the justification for deviating from the otherwise generally applicable requirements for a proof of claim, why are we then

giving you an extra arrow in your quiver that you weren't otherwise entitled to? You're sort of -- you're doing a bait-and-switch. You're inducing me to give you information beyond what I would ordinarily be required to give you to facilitate mediation, but then you also want to reserve the right to use that as a sword against me later.

MR. DONATO: It's not just to facilitate the mediation. It's to facilitate a resolution. Mr. Scharf walked up here and said, we don't promote false claims. We -- that's what this is about. This is all a ruse.

Counsel is very skilled, very experienced, but the bottom line is, it is totally appropriate. You have the authority and you can join the other 25 Diocesan bankruptcy judges who added stuff to the proof of claim. I know that there's an area on the 9009 about how far you can go. You'll be the 25th judge, if you go this way, to do it. Okay.

What are we doing? We're trying to weed out claims. We are trying to move the settlement process. Right now I'm asking that you do it under the umbrella of the mediation. I'm not limited to that. If we litigate -- God forbid. If we litigate we have to be -- have to have the same exact ability to weed out weak claims. We have no intention of doing any of that right now, but that's what's going on. The real purpose of the Committee's response is to take -- basically, change the Bankruptcy Court to say, I can file a claim but you can't file

an objection. That's totally --

THE COURT: Well, I specifically heard Mr. Scharf say you could --

MR. DONATO: -- the claim allowance --

THE COURT: -- file an objection.

MR. DONATO: Well, yes, but I can't use the information in the claim to make the objection. He wants me to do a books and records to simply file 124 claims that say, I looked at my books and records and I don't have any of these claims in my books and records, so therefore, I'm filing a books and records exchange objection? That's not going to move the ball.

Mr. Scharf says, just come back to me and ask me questions. That's what we're trying to avoid. I don't want insurance companies asking 75 questions. Six separate ones. Depositions, follow-up, the whole point. Frankly, the Committee's position hurts the survivors.

Let's get the basic information out. Let's utilize it as appropriate under the Bankruptcy Code in order to seek a resolution, whether it's under mediation, in litigation or just us trying to resolve the case because it's not just limited to the mediation piece.

THE COURT: Thank you.

MR. SCHARF: Your Honor, those cases where those orders were entered were on consent with the Committee's

involvement. The only time I can recall where I was overruled on objections to questions that were being asked as in USA Gymnastics when the people had filed -- the survivors had filed -- or completed the exact same form that the Dio -- that the debtor in that case was asking for in mediation.

So here we're -- anything that was done before on consent deviating from the law was done on consent and the landscape changed a little bit.

I also just want to make one comment, because we're going to hear this a lot, that the Committee is not acting in the best interests of survivors. The Committee represents survivors. The Committee is composed of survivors. We know what they're -- what -- we're doing the work to protect them.

THE COURT: I think, Mr. Donato, I think the issue is you're asking an abuse claimant to give a simplified form, meaning that your form is not quite as simplified as the Committee's but it's much more simplified than the insurers', and then potentially later on going to treat that abuse claim supplement like it's a complaint and then argue that it doesn't satisfy Iqbal's notice pleading requirements.

And so it gets -- you're sort of, again, kind of inducing the person to give very basic details and then saying, well, see, now you didn't prove -- you didn't state a claim.

I mean, I guess maybe I solve that problem by giving them leave to amend. Is that the answer? Like then, fine.

If -- if it's facially not sufficient, Mr. Scharf or the claimant can come in and say, look, yeah, I know, Judge; give me leave to amend and I'll put in what I told -- you know, wrote -- my mom wrote a letter to the Chancery and this, that and the other thing, right? Is that --

MR. DONATO: You're reading my mind. Judge Glenn did exactly that. We're just talking about a claim allowance process. He didn't knock claims out. He said, replead, you know, set forth more detail.

And just so we're clear, the key in this case is notice. Okay. That's what this -- let's talk about the elephant in the room here. It's notice. If a Diocesan employee did some bad act and the Diocese had no prior notice, there is no liability. That's what we're talking about here. So that's why the carriers are pushing on notice. I'm not in their camp, but this is what we're talking about here.

I think the Syracuse questions are properly balanced. They are not overly aggressive. I think they strike the balance that you actually -- when we first started to chat you said, you know, I'm looking at the balancing of all the pieces. I think it balances it perfectly. I think this attempt to add the mediation privilege is simply to alter our ability if ever needed to review and analyze claims in the entire case process, not limited to mediation.

THE COURT: Okay. Mr. Scharf, what about my liberal

leave to amend in the event that we start seeing abuse claim supplements being treated as complaints in Iqbal motions?

MR. SCHARF: If you go that route and there's -- you do not make the subject of mediation privilege with liberal leave to amend, I think it has to be coupled with the right to discovery or the ability to conduct discovery because right now survivors are kind of in a Catch-22.

THE COURT: Aren't you upset with the Supreme Court in Iqbal and isn't that a problem for -- isn't that an issue you need to take beyond me because that's not my -- I mean, as much as I might think that they should be entitled to discovery first, Iqbal says what Iqbal says and, last I checked, they have more authority than I do.

MR. SCHARF: Alternatively, you could just grant -- we could just grant stay relief to sever or just allow everybody to sever their claims against the parish. I mean, there are state court cases out there that are not against the debtor.

THE COURT: Right.

MR. SCHARF: So while everything is being stayed, while people are not moving for motions to sever, you know, if we create a process where people think they're going to have to get discovery down the road, you're going to start seeing a lot more motions for relief from stay. You're going to start seeing a lot more 2004 motions. Let's not use the combination

of a proof of claim form and a stay as a sword, you know, when things are meant to be a shield and to help the process.

THE COURT: Okay. Thank you, Mr. Scharf.

To the insurers. I'm going to take attorneys in the courtroom first and then I'll ask if anyone wants to be heard on the telephone.

Mr. Haberkorn?

MR. HABERKORN: Thank you, Your Honor. A lot to cover, so we'll try to be quick.

Our objection -- I've heard a lot about no one wants these false claims. Of course, no one wants false claims. We 100 percent agree. So why not require some common sense, simple safeguards in the proofs of claim? It doesn't make -- to prevent these false claims, it makes no sense.

THE COURT: Well, okay, but that gets back in -- that gets back to the balancing I proposed to Mr. Donato. Yes, nobody wants false claims, but we also don't want to discourage abuse claimant survivors from filing claims by creating a process that is too intrusive, too detailed, too cumbersome for -- some of them may be pro se -- for them to access. So it's not an issue of -- no one here is saying, we want legitimate claims discouraged and no one here is saying, we want false claims encouraged. It's about how are we striking the right balance between those two ends.

MR. HABERKORN: Understood, Your Honor. Understood.

And that's why I think our -- we made some proposed small changes to the proposed form that I think does strike that balance.

For -- just to walk through some, the addition of the simple yes/no question. The New York Child Victims Act was -- had one clear requirement, the complaint had to be filed between the dates of August 14, 2019 and August 13, 2021. That window has closed. Just a simple, did you file a complaint, yes or no; if yes, when was it filed.

THE COURT: What do you say to Mr. Scharf's rejoinder that you already know whether they filed a complaint or not?

MR. HABERKORN: Your Honor, the issue is by asking that question we're making -- we are ensuring that the claims, the claimants have acknowledged that they're attesting to the fact that they filed a claim, that -- and then asking them to attach the claim which some of these complaints, these -- on the public docket they're anonymized. It's a heavy burden to go through and go, okay, well, we have them, let's try to figure out whose is whose and which goes to which group of claim, when we can simply ask them, well, you have the complaint. You say you filed it. Just attach it. It's a very simple request. And I fail to see how that's much of a burden for anyone who has filed a complaint.

The fact that it couldn't be any more simple. And §502(b)(1) of the Bankruptcy Code requires that a proof of

claim present a viable claim in a bankruptcy proceeding. That's simply what we're trying to get at. There's a prima facie case for a viable claim being made in the proof of claim.

THE COURT: But you don't dispute that I'm being asked by pretty much by everybody to deviate materially from the form proof of claim? I mean, it is ordinarily the case that there's very -- unless it's based on a writing, there's very little demanded of. In this case there would be very little demand of a slip-and-fall claimant in order to file a viable proof of claim. And we are asking, again, with -- I think with good reason. Everyone agrees there's good reason to ask a sex abuse claimant in a situation like this for this additional information, but we are asking them to do something more. And you're asking me to go even one step further, which is essentially plead facts in a supplement to a proof of claim sufficient to survive a motion to dismiss, which is way beyond what the ordinary proof of claim requirement -- proof of claim requires.

MR. HABERKORN: Your Honor, this -- we completely agree. This is significantly different from your ordinary monetary claim on the basis of a bond or a credit agreement or even a trade claim. This is -- these are complicated fact-intensive tort claims. Based on facts and knowledge that, quite frankly, only one person in the world possesses and unfortunately, that's the abuse victim.

THE COURT: Oh, and the Diocese. I mean, the Diocese in many of the situations is why the party possessed the most pertinent information in terms of whether it had notice or not, you know.

MR. HABERKORN: Well, that's what we're trying to get at.

THE COURT: But you're asking the claimant for it, is what I'm saying. You're imposing a burden on the claimant to ask for information that in -- especially if it's a -- was it -- they were a child of the time is very much within the knowledge of the Diocese and would be surprisingly extreme if you could answer that question when you were alleging abuse at age eight, who at the Diocese knew about it. What do I even know at the Diocese at this -- Diocese, what does that even mean. All I can tell you is, this happened to me, this priest in this place and this -- roughly, this time. How would I know who knew at the Diocese?

MR. HABERKORN: And, Your Honor, the intent of that wasn't to prohibit a claimant from saying, I don't know. It's completely reasonable for someone to not know. It's simply to get the small percentage -- to ascertain information from the small percentage who do know. And of course --

THE COURT: I know, but --

MR. HABERKORN: -- those questions could be modified further to clarify that.

THE COURT: But you're saying that and, again, I have a greater degree of comfort if you're saying that because, look, Judge, in the mediation we want to be able to use that information or the absence of that information to, again, like I've said, ascertain the potential scope of liability and, therefore, determine whether any payment, some payment, large payment is -- warrants on this claim. That is of less concern to me than asking someone for information that's not ordinarily required by the proof of claim form that then gets turned around and whip-sawed on them as the basis of a claims objection saying, you know, you did not plead facts sufficient to state a cause of action under Iqbal to -- for negligence against the Diocese, therefore, your claim is disallowed.

MR. HABERKORN: And while that's not the same standard, the proofs of claim must present at least a prima facie case. They must have a prima facie claim. And if they can't -- if they don't include even the most basic facts that are asserted as part of their claim, then we should be able to object. I mean, primarily it would be used in mediation, of course, but -- and this kind of goes to the mediation privilege issue as well, mediations aren't iron-clad. Like if it falls apart, we should be able to investigate the veracity of the claims presented.

THE COURT: Well, what prevents you from doing that? Why -- I mean, you would claim person is going to come in, the

abuse claim supplement says it was, you know, Father So and So at such and such a parish; Diocese says, we don't know anything about Father So and So. No records about him whatsoever, no issues with the frequency of his transfers, no other complaints. And then you go back to that particular claimant and say, tell us more. Tell us more about, you know, who told what, who knew what to who and this, that and the other. And you are resolving it on a case-by-case basis, as opposed to imposing an extra burden on the whole universe of claimants and then, again, potentially a disincentive to a universe of potential claimants.

MR. HABERKORN: Respectfully, Your Honor, there is also a bala -- a counter to this argument that we cannot ask additional questions. There's also Rule 1001, which requires the process to be run in a way that is most expeditial -- expeditious, efficient and just for the estate.

Thus, requiring the bare minimum and then having to go back and conduct discovery on every single one of these --

THE COURT: We're way beyond the bare minimum. No one is proposing the bare minimum. We're way beyond -- bare minimum is 410. We're not propose -- no one is proposing the bare minimum. Everybody in this case is proposing something that is beyond the bare minimum. It's just a question of how much, how far, how detailed.

MR. HABERKORN: Understood, Your Honor.

So I suppose in that case, then are -- I would understand Your Honor's comment, we're all in agreement that the modifying the form would --

THE COURT: Everyone --

MR. HABERKORN: -- or --

THE COURT: -- here is in agreement that we can solicit abuse claim supplements along with the proof of claim.

MR. HABERKORN: Understood, Your Honor.

THE COURT: What's disputed is, is it -- I'm going to call it. I'm going to say mandatory in the sense that failure to complete it is, in and of itself, grounds for an objection to the claim. How much information are we asking for and what uses can that abuse claim supplement be put to and then can attorneys sign. That's how I sort of define -- that's how I think of this. Everyone is in agreement. We can ask for it, include it. It's what happens if you don't do it; can your attorney sign it; what can be done with the information.

MR. HABERKORN: In all fairness, Your Honor, the idea that even a fraction of these claimants will submit the supplemental questionnaire without any kind of consequence for not doing so, without even just notice that it can be the grounds of an objection, it's just not realistic. Well, we had that information. I mean, don't -- we should know that from Syracuse. I mean, excuse me. We know that we don't have -- I mean, people -- how many people submitted abuse claim

settlements, roughly, in Syracuse?

MR. SCHARF: Every one. Almost every one. I think very one.

THE COURT: Yeah, that's not a question I need to -- that's the per -- and again, I realize correlation doesn't equal causation and I'm asking all of you questions about cases that you weren't involved in. That's the part that is frustrating to me is I have on the one hand people saying, you make this bar too low and you're going to get a flood of false claims and no one is going to fill them out.

Well, I don't know. Did that happen when we had -- because I've seen language that -- Syracuse has language similar to this. Albany has language similar to this. And I'm not aware of a flood of false claims and tons of claims objections in those cases.

And on the other hand, you have given me sample orders, primarily from out in Minnesota that asks this sort of very in-depth questions that you asked. And I would be interested to know if, boy, you know what, we had all this extra information and there's no evidence that discouraged people from filing claims and actually because we had all that information on the front end, we were able to get to a resolution much more quickly and efficiently. I just -- I don't -- I'm being presented with a parade of horribles on both sides. It seems to me that's not something I should

necessarily have to guess about. We should -- we have data already. We just haven't -- it hasn't been compiled and presented to me.

MR. HABERKORN: Yes, Your Honor.

MS. STIPPEL: Your Honor --

THE COURT: Yes.

MR. STIPPEL: Oh, I apologize. My name is Taylor Stippel. I'm an attorney at Jeff Anderson & Associates. And I don't know if now is the appropriate time, and I don't mean to cut off Mr. Haberkorn, but I think I can speak to a couple of questions that you had when the time is appropriate.

THE COURT: You okay with that, Ms. Stippel jumping in, Mr. Haberkorn, or do you want to continue with your argument? I'm fine either way.

MR. HABERKORN: I can step back if that's okay.

THE COURT: All right. Go ahead, Ms. Stippel. And just can you state your appearance for the record, please, Ms. Stippel?

MS. STIPPLE: Yes, absolutely. Apologies, Your Honor. Again, this is Taylor Stippel, S-T-I-P-P-E-L, from Jeff Anderson & Associates. Our firm has represented survivors across the state of New York including Syracuse, as well as across the state of Minnesota, and we are the firm that represented the survivors in Minnesota that Mr. Scharf was referring to.

And so, Your Honor, first I wanted to just acknowledge that I agree with your comments. I've heard you use the phrase "bait and switch"; I've heard you use the phrase "use as a whip-saw." And we do believe that Your Honor is correct about what will happen if there's more information in these claim forms that --

THE COURT: Well, just to be clear, Ms. Stippel, I said that I was worried about that. I didn't say that it was.

MS. STIPPEL: Okay.

THE COURT: I haven't decided whether it is or isn't. I'm worried about that and I think that's the perception, but just to be clear, that's not -- I've not made any ruling to that effect, but go ahead.

MS. STIPPEL: Understood, Your Honor. And I just -- I thought that your words were appropriate and understand that's not what you're ruling, but I'm sure that you've expressed, and we believe that that appears very -- is very real and it's justified.

So with respect to Syracuse, you know, I heard Mr. Haberkorn state that it's unrealistic to think that people will submit the abuse claim supplement if they aren't required to. In Syracuse, it's our reading of that bar date order that survivors were not required to fill out more than the Form 410. But all of our survivors, we represented over 120 of the 390-plus claimants in Syracuse, we worked really closely with every

one of our people to get that abuse claim supplement filled out.

We intend to do the same thing here where we represent nearly half of the claimants. So we completely agree with Mr. Scharf that that form should not be mandatory. It should not be that survivors who are the most vulnerable group of creditors that could possibly exist in a bankruptcy case like this, these survivors should not be required to do more than a creditor has to do, much more sophisticated creditors in other cases. And if they aren't required to fill out that form, I want everybody on this hearing to rest assured that we at least, representing about half the folks here, would intend to submit that ACS or the abuse claim supplement for all the people we're working with. So that's one point I wanted to highlight.

THE COURT: Thank you, Miss --

MS. STIPPEL: And with respect to -- yeah. And, Your Honor

THE COURT: Go ahead.

MS. STIPPEL: -- the issue of Minnesota.

THE COURT: Yes, go ahead.

MS. STIPPEL: And yeah. And so our law firm represented the survivors, the vast, vast majority of survivors in Minnesota. And respectfully, Your Honor, the landscape has just changed since Minnesota. Before 2019 these cases did

resolve consensually with all parties globally. The Diocese, the parishes, the insurance company. Beginning in 2019 window legislation would pass throughout the country for survivors in New York, New Jersey and California.

When the insurers began to be exposed to much more liability than they ever had been before, there have been fewer settlements and that breaching the mediation privilege in any of these cases where we're involved, which is every Diocese case in New York, when I say that there's been one settlement reached in Rochester and it has been confirmed that it's on its way. We didn't face what we are facing from the insurers here in Minnesota.

So I respectfully submit, Your Honor, that the context has changed. These insurers, I believe, are trying to add questions to this claim form that they will later weaponize using claim objections against these survivors. Your Honor noted that, you know, in response to Mr. Haberkorn noting and asserting that these facts are -- only one person in the world possesses these facts, the survivor, that's not true. The insurers are going to ask the survivors to include information that they just don't have access to. They don't know what notice the Diocese had. They don't know what relationship a school, a particular school that was staffed by a religious order, what relationship that school has to the Diocese.

To take these survivors, who filed complaints in

state court under a notice pleading standard whose cases were advancing and as litigation was ramping up and started to get discovery then the bankruptcy happened and they were completely divested of their right to get more information, to ask these survivors to include in a claim form to merely preserve their rights information there's no way they'd have access to and then weaponize their lack of information and assert claim objections, which they've intimated already today that they will do, we're hopeful the Diocese won't, it sounds like that's not on their radar now, but something that could happen -- Your Honor, we think that's inappropriate.

So we completely agree with the Committee. We agree with Mr. Scharf and I stand ready to address any other questions the Court might have. Thank you.

THE COURT: Thank you, Ms. Stippel.

Mr. Haberkorn.

MR. HABERKORN: Just to briefly respond, in Syracuse the form did state that it could be grounds for a claims objection. It didn't --

THE COURT: Yeah.

MR. HABERKORN: -- completely --

THE COURT: No.

MR. HABERKORN: In other words, the disclaimer was --

THE COURT: Yeah, that's -- yes.

MR. HABERKORN: -- still there.

THE COURT: Yes.

MR. HABERKORN: It's -- and -- excuse me. Sorry.

It seems like we run the risk by not including the -- you know, even some basic information, like that we've requested, the yes/no questions specifically. The more basic ones, the less controversial questions as opposed to the who knew about it. And so leaving those to the side, I think the yes/no question about the complaint is critical. The fact that the proof of claim should be paid by the claimant themselves is also critical in this case.

THE COURT: What's my authority? So the rules say that the signer of a proof of claim attests that he or she has a "reasonable belief" that the information is true and correct. So if you have attorneys signing these claims and you do not believe they have a reasonable belief the information is true and correct, why can't you through me, we police that through objections that presumably raises -- set attorney misconduct issues. Why is that not sufficient? And then I would say also, what is the legal basis for me to require someone to sign their own proof of claim when the rules permit signature by a person or someone authorized to sign on their behalf, which very often includes an attorney?

MR. HABERKORN: Quite frankly, Your Honor, from a practical perspective it's to protect the sanctity of these proceedings.

THE COURT: But I'm saying, you can -- can't you protect the sanctity of the proceedings just as well through -- you think there's a reason to think this is a bogus claim or without basis and an attorney signed it? You have a mechanism to address that as opposed to me imposing a requirement upon sex abuse claimants that is not imposed upon ABC credit union down the street, Wells Fargo Bank slip-and-fall claimant?

MR. HABERKORN: Respectfully, Your Honor, we need to avoid the risk of any sort of false claims like we saw in bank -- in Boy Scouts. Like --

THE COURT: But even if you are able to address that, you have other avenues through which you -- if you think there's been a flood of false claims, if you think there are attorneys signing proof of claims, but they don't have a reasonable basis to believe are true and correct, you have a mechanism to address that. You -- I enter an order, which I'm not sure I have the authority to do anyway. I enter an order telling a sex abuse claimant, you must sign the proof of claim, and there's a person out there that because of what they experienced just cannot bring themselves to sign their name, they actually cannot find it within themselves to be traumatized in that way and I'm going to deprive them of their -- I'm going to disallow their claim?

MR. HABERKORN: Well, first off, this was the approach taken in both Harrisburg and New Orleans so there is

precedent for requiring signatures.

Additionally, the issues in Boy Scouts just even the auditor right now has determined that they needed -- that the new questionnaires for 75,000-plus claims needed -- that are being audited now, need to be signed by the claimant themselves. So even though there was a realization that that was important --

THE COURT: But that hasn't happened invariably. That's -- that is one situation.

To me, you're asking me to impose a burden and create a problem to forestall a hypothetical problem that you have the ability to address in any event.

MR. HABERKORN: Yes, but after imposing significant burden on the estate, on the insurers, it's --

THE COURT: Fair enough.

MR. HABERKORN: -- going to be --

THE COURT: I get that. Yeah.

MR. HABERKORN: Yeah.

THE COURT: Fair enough.

MR. HABERKORN: It's all about efficiency is what we're looking for.

The other point that I -- that we're looking for a change to is the confidentiality agreement and this one, I actually think, is just a clarification because we don't actually think that it intended to -- the proposed language

intended to close off the proof of claims in this way. It needs to be clear that the proofs of claim can be used in depositions, just questioning of witnesses when the veracity of these claims are being tested during the claims allonge process, during the plan confirmation process. It needs to be available. The Section 502 compels this Court to permit such use for purposes of verifying and challenging proofs of claim.

THE COURT: Let me ask you, why the question about religious practices, the frequency of mass attendance and why -- what's the purpose of that question?

MR. HABERKORN: Just to confirm that they were a regular -- just to proof that that was there where why went, what they attended, that they were a member of that congregation. If they didn't -- they're making a claim that something happened at church, at the school, at this campus. If they didn't attend regularly, then we -- then it raises, you know, a potential red flag that needs to be investigated.

THE COURT: Okay. Thank you.

MR. HABERKORN: Pause. Like I said, a lot to get to.

I also wanted to -- we touched on this briefly, but the -- we agree fully with Mr. Donato's position on the mediation privilege issue. I think it's too great a restriction. It -- and, quite frankly, it would create additional cost expense to an extreme amount for -- you know, the Diocese for all the other parties involved, just

investigating all these claims again, even though the information was provided once.

THE COURT: But I don't -- I don't -- I see how it creates additional work for the Diocese or the insureds if they want to bring a claims objection. I'm not sure it creates any extra work in terms of accomplishing the main end to which -- the main benefit that I'm being pitched as a rationale for including it, which is it helps us with mediation.

So, in other words, if you get the abuse claim settlement subject to a claim -- a mediation privilege, that helps you in mediation, which was the whole idea of having the abuse claim settlement. Yeah, it does make your ability to object to the debtor's claim a little more onerous and expensive, but I think that's -- again, that's back to my -- Ms. Stippel, I'm not endorsing this view. That's back to my concern about we're bait-and-switching somebody into giving us basic facts, basic information to the best of your recollection and then later on holding that -- holding that information to a pleading standard that the person could not reasonably have been expected to know they were being held to.

MR. HABERKORN: But that comes back to the point that I made at the very beginning and have repeated several times. It's simply requiring a prima facie claim to be made and --

THE COURT: I know, but you have to understand this in the context of bankruptcy. That a proof of claim requires

compliance with 410. That's prima facie pre-deemed allowed claim unless objected to. You -- people file proofs of claims all the time that do not satisfy Iqbal's pleading standard, right? They just file a claim. And that's -- and then subject to your right to object, it is deemed allowed unless objected to and if you object to it, you object to it.

But what I'm saying here is, if I don't have the protection of the mediation privilege aren't I effectively allowing you to transform these claim supplements into complaints and then turn around and claim that they're subject to 12(b)(6) dismissal and that's what -- that's -- I'm not saying you don't have the right to make the argument that they haven't stated a claim.

Fine. I'm saying that that is an argument that needs to be dealt with in the claims objection process without the benefit of using something that was intended for one purpose to a different purpose.

MR. HABERKORN: At the end of the day, the claim -- the questions in the supplement go directly to claim -- to the confirmation process -- the plan confirmation process. And in the event that the mediation were to break down, we don't -- obviously don't want that. That's bad.

But these Diocese cases have had a nasty habit of going through mediators quite quickly. To suddenly say that they cannot be used at all for purposes of anything outside of

mediation, including, you know, plan confirmation, claims allowance, any of this is just a step too far.

We're not saying it shouldn't be confidential. Absolutely not saying that. They are going to be subject to very strict confidentiality requirements. We understand that the information is incredibly sensitive and -- but that's a different requirement all together than closeting these to the mediation and nothing else.

THE COURT: But I think that there's arguably a question that has not been answered, which is, do I -- right now I hear the Committee saying, we consent to the addition of the abuse claim supplement, but our consent is conditioned on the understanding it will be protected by the mediation privilege and absent such consent -- absent such privilege, we withdraw our consent. Do I have that correct?

MR. SCHARF: Yes, Your Honor.

THE COURT: Yes. So then the question becomes do I have the authority under the applicable rules of bankruptcy procedure to compel the submission of an abuse claim supplement absent the consent of the Committee to modify the Form 410 materially in my view without the consent of the Committee.

MR. HABERKORN: With good cause, yes. I believe that 1001 combined -- Rule 1001 combined with -- appears on 1003 absolutely permits this Court to make modifications to the Form 410. It's in -- good cause is shown based -- for nothing else

on the complexity of these claims. It just needs to be a little bit more information provided.

MR. WEISS: Your Honor, can I add something to that point? This is Matt Weiss from Interstate.

THE COURT: Yes, go -- well, Mr. Weiss, I appreciate that. Let me come back to you. I do have -- I've several attorneys in the gallery here who wish to be heard, so let me come back to you. To the extent your points are not a representation on behalf of several insurance insurers here and to the extent the issues -- the arguments you want to make are not made by other counsel, we'll come back to you.

MR. WEISS: Okay. Thank you.

THE COURT: Go ahead.

MR. HABERKORN: I just wanted to point to the -- this good cause standard the Fourth Circuit in A. H. Robbins, 862 F.2d 1092, they open a decision to disallow claims by claimants failed to complete a questionnaire. It's directly to this issue. This has been done before. It's been -- it's been looked at.

And so there is absolutely grounds for you to be able to do this and, you know, especially your (indiscernible) would even like bankruptcy.

Just want to make sure I've addressed all the other points. There were a lot of them. I think that's everything I wanted to cover.

THE COURT: Thank you, Mr. Haberkorn.

MR. HABERKORN: I appreciate it, Your Honor.

THE COURT: Thank you.

MR. HABERKORN: And I will cede the podium.

THE COURT: Thank you.

MR. KAHANE: Thank you, Your Honor. Jeff Kahane, Duane Morris, on behalf of London Market insurers. There's been so much said today about so much stuff. I might not be able to hit it all just because it's -- but this is the 15th abuse bankruptcy case that I've appeared in. And the lack of sufficient information provided by claimants is the primary cause why these cases take so long.

In Rockville Center when we opposed the motion for a bar date because they didn't include a question about notice and the judge ruled against us so the debtor sent out a form and didn't have it and when the debtor looked at the proof of claim forms, many of which didn't include allegations of notice and objected to a bunch of them, and the judge said, well, but you sent out a proof of claim form that didn't have it, so I'm going to give them all another chance.

We're just trying to avoid this double litigation over claims that are facially deficient. I'm not talking about fraudulent claims. I'm talking about claims that for whatever reason don't set forth facts that establish -- even alleging a debtor's liability. And in New York while there's four

elements if you don't allege all the elements you haven't made that.

Now, you're in federal court. They're all filing their claims in federal court. They have to meet the federal standard. It's not that much more of a burden. They may not know and they would say that but, I mean, there's the -- last week Judge Glenn permanently disallowed 33 proofs of claim because they failed to allege notice. And every single one of them had been objected to before and they was given leave to amend and so four months later they were doing the same thing again and none of them had added facts about the notice.

So it seems worthwhile to consider just asking everyone like, you know, trying to elicit all the relevant information. When the claim -- when we have the relevant information, the insurer can sit down across mediation table and say, well, we've got some bad ones, we've got some not so bad ones. We've got some that aren't worth anything. And very quickly, hopefully, get to a number.

We think that with respect to the field, nothing legally has changed about these claims. There's been no change in the law. Minneapolis had a window, but after the Diocese of Winona case it became very difficult to mediate these cases.

Mr. Scharf, who I've met on the phone back on the Diocese of Helena case, although he probably doesn't remember, you know, we got into a room and we settled the Diocese for

Rochester case. At the beginning of the year I had never met him in person before, but that wasn't in the context of the mediation. That was a judicial settlement conference. And Judge Warren had just had enough and said -- sat down.

MR. SCHARF: I want to ask counsel not to discuss that what happened at the settlement --

MR. KAHANE: Oh, I'm not going to say anything else about it, only but --

MR. SCHARF: You said Judge Warren said he had enough.

MR. KAHANE: Oh, I'm sorry. He was -- he issued an order --

MR. SCHARF: It was a settlement. End of story.

MR. KAHANE: It was in the context of the judicial settlement conference, not --

THE COURT: All right.

MR. KAHANE: -- a mediation.

THE COURT: We can move on. I got it.

MR. KAHANE: All right. Obviously our clients don't want to pay money, but we want -- our clients want to get to the end of whatever that end result is as quickly as possible so they can assess their liability, put a preserves if necessary, whatever is required.

But without the information, these seem just drag and, you know --

THE COURT: But let me ask you this. So if I have an abuse claim supplement part of the process and I can sort of go back and forth about where to strike the right balance, do we need more questions than the Committee is proposing? Do we need every question that you're proposing? We come out somewhere hopefully on the right -- strike the right balance, that serves the end of trying to get this resolved by mediation.

And then if I grant the mediation privilege, that also then resolves the concern that, again, we're inducing a claimant to do something that other claimants are not required to do that -- go ahead.

MR. KAHANE: Except that it's not -- these claimants are pretty unusual to have this many negligence claims asserted in a bankruptcy case. When you're talking about asbestos, that's a part liability claim. That's automatic liability. I was exposed to your product, I got asbestosis, that's the end of the discussion. Negligence is not discussed.

When you're talking about the hearing aid claims or the hearing impaired claims, all these things are different types of claims.

THE COURT: All right. But isn't that an argument you need to make to Congress, that they should revise 410, have a special Form 410-T for mass tort claims with negligence that requires more information on the front end? The fact of the

matter is, 410 asks for the information it asks for and the Rules say that it's supposed to be in substantially that form. I do have some authority I think to ask for additional information, but then that -- again, it's about balancing.

And so if I am going -- again, I think pretty materially beyond what 410 requires, four good reasons because it will facilitate mediation and with the consent of the Committee, to me that is a much more modest step than me imposing a requirement and according to your argument imposing a requirement making it mandatory, making failure to comply subject to ipso facto disallowance. And then also causing that additional information to elevate the requirement from the basic 410, this is going to be treated as a complaint and evaluated under Iqbal.

MR. KAHANE: Yeah. The problem, though, is that it leads to a huge number of claim objections because if every -- if all the information we have heard in a claim that we can cognize, take -- and with respect to the claim is they filed a proof of claim and it says that they were harmed by the negligence of the Diocese and they want ten million dollars or whatever the number is or unliquidated. We have to object to that claim whether or not they could allege --

THE COURT: Right.

MR. KAHANE: -- all things. And so instead of having 30 claim objections we're going to have 120.

THE COURT: I don't follow. Why? The claims are what they are; the defenses are what they are. And you have the same ability to suss that information that you would otherwise. It's just you don't have the sort of -- the extra leg up of being able to point to their abuse claim supplement and say, well, that's your claim and on its face it doesn't meet Iqbal.

MR. KAHANE: But with respect to the abuse claim supplements that do meet Iqbal, those are claims that don't -- aren't going to elicit an objection.

THE COURT: Okay. All right.

MR. KAHANE: I think that's pretty much all I had today.

THE COURT: All right. Thank you. I appreciate it.

MR. KAHANE: Thank you, Your Honor.

MR. SCHAPP: Your Honor, Jon Schapp on behalf of Wausau.

Judge, as I understand it, and I'm not a bankruptcy lawyer, so forgive me if I say some wrong things, but I think the idea at the end of the day is to confirm a plan. You've heard -- I believe every person in this courtroom get up and say, the way to do this is through mediation. That's the best way to do it. It's the most efficient so that the money doesn't go to these people but goes to the claimants here.

The best way to do this is mediation. In order for

mediation to be successful, the insurers -- I'll only speak for me, but I think it generally applies to everyone else. We're going to have to pay money. If I don't pay any money the case isn't going to settle. How am I going to pay money? I'm going to get information. More is better than less. The more information I have, the more I will have an ability to pay money. The less I have, the less of an ability and willingness to do so.

Going hand in hand with more information is the need, the absolute requirement that I could rely on the information. And if you're telling me here's a form that we're filling out but this is only for mediation and if mediation falls apart or even if it doesn't and I want to raise some issues with the Court about any of them, you can't do anything with this piece of paper. That piece of paper has to be thrown out because it was only for the purpose of mediation.

That piece of paper is pretty worthless to me and we might as well skip the whole mediation to begin with because if I can't rely, if I don't get this information and I can't rely on the accuracy of the information, what's the point? It's useless. If we have to just throw these out without any value to them whatsoever, I can't rely on them.

THE COURT: I don't think anyone is saying you have to thrown them out. I think that the -- it does not transform the proof of claim into a complaint subject to Iqbal standard.

You certainly can act on it. I mean, I think first of all, it's -- I understand everyone to be saying it's tremendously useful in the mediation, which is not something to be dismissed. It's the whole driving force behind it.

But -- and in the event that mediation fails, you now know based on the information in the abuse claim supplement that the person was in Omaha or told no one or whatever the case may be and you have the ability to obtain that information through other avenues and object to the claim as you would any other claim that's filed in the case. It's just you're not being given the extra legal leg up of having the proof of claim judged on a more rigorous standard than a slip-and-fall claimant's claim is judged.

MR. SCHAPP: Well, I think we're talking about two different things, Judge. One question is, can we use this and does it have to meet the standard of pleading. It's another thing to say -- and I think there's a very easy solution to that issue, which is, everybody's got a right to amend on any claim that's -- that it's raised on this and you've heard everybody sort of agree with that concept. But it's another thing to say, this document is subject to mediation privilege and can't be used for any other purpose.

THE COURT: I understand, but isn't the problem going to -- isn't the opportunity to amend illusory because we're going to say, look, absent discovery I can't amend because

there's no way in which I can satisfy Iqbal because I can't -- I need discovery to do that and you're not going to let me have it. So you can tell me I can amend all day long, but I can't do it.

MR. SCHAPP: Well, I guess I'm not understanding why not. Why can't they get discovery if they -- if there's a claim objection --

THE COURT: The facts that established the negligence, they're going to say are very much -- because I was abused when I was eight years old, I have no idea who the Diocese knew or reasonably should have known of that. I need to get that from the Diocese.

MR. SCHAPP: Which I think is a -- the most likely scenario.

THE COURT: Yes, right.

MR. SCHAPP: So what would prevent them at that point from getting discovery on that issue?

THE COURT: When the claim gets disallowed because it doesn't satisfy notice pleading saying knew -- I'm guessing the Diocese knew. I don't think that satisfies notice. Isn't that the argument you're going to make, doesn't satisfy notice pleading because there's no basis for it?

MR. SCHAPP: That's not my intention right now on that standard, but -- and again, I think that's a very different question than saying, you can't use this proof of

claim form because -- or you can't use this proof of claim supplement because it was subject to mediation privilege. I think those are very two different things.

THE COURT: Okay. I think the issue is that to what extent is the abuse claim supplement become part of the proof of claim for reasons beyond mediation.

MR. SCHAPP: Well, that's a far more limited question than saying, mediation privilege applies to this document, which is what really concerns me that this piece of paper I can't rely on it, I can't believe what's stated in it because that person, no matter what happens, will never be subject to cross-examination about it, will never have to prove those facts that are established in there and then can change their story completely without any consequences to that.

THE COURT: So Mr. Scharf, what do you say on that point? So I issue an order that says something like for purposes of a claims objection any information contained on the abuse claim supplement shall not be considered part of the proof of claim. But no one else is under any limitation in terms of can they introduce it as evidence, can they cross-examine someone about it, can they cross-examine the claimant about it. They can use it for other purposes. It's just not going to be the basis for a claims objection saying that that's part of the proof of claim.

MR. SCHARF: I guess the question really is somebody

submits a proof of claim under penalty of perjury and you can't test the perjury. I guess if the limitation was simply to explore the perjury maybe that should be allowed, but maybe the mediation -- for that purpose, to explore the perjury, whether or not the person committed perjury, but beyond that I think we're just opening a door that I think we may not understand the consequences of on the fly.

THE COURT: Okay. All right.

I mean, is that what I'm hearing you say, Mr. Schapp, that you would be at least theoretically supportive of limited privilege or limited qualification, such that we're not giving -- go ahead.

MR. SCHAPP: I think the problem is that if we can go back to Your Honor's Omaha example --

THE COURT: Yes.

MR. SCHAPP: -- if it says in the proof of claim supplement Omaha, are we not allowed to use that, to say you're admitting you were not abused in the Diocese of Ogdensburg. You've admitted that in the supplement. We should be able to use that. That's very different --

THE COURT: Right.

MR. SCHAPP: -- than the very limited, doesn't meet the Iqbal standard.

THE COURT: Well, I understand. I guess my concern is, did you tell anyone about the abuse. Answer, no. Then you

bring a claims objection saying, look, on its face it can't be -- they plead no notice on behalf of the Diocese.

MR. SCHAPP: Well, I think, Your Honor, you could order that that example that you just gave, which you seem more concerned about, understandably, is not -- that alone isn't the subject of a claim objection, because I would admit that there's a possibility and, again, I don't expect almost anybody to be able to say, yes, to the question of, yes, I am aware of who of the Diocese was aware of this abuse. I expect that to be minimal, but we would like to know if they are, if there is that information out there. More information is better.

THE COURT: No, I don't think anyone -- I get that. Right. It's just the issue of to what use is it being put. Is -- that's -- and it's not unfounded for the Committee to be worried that insurers will seek to use abuse claim supplements to argue it doesn't satisfy Iqbal because that's what's -- has happened.

MR. SCHAPP: And I think -- but again, I think there's a vast difference between saying you can't use it for the very limited purpose of not satisfying that --

THE COURT: I think that's an important clarification. I get that.

MR. SCHAPP: -- and anything beyond that.

THE COURT: I think that's an important clarification. Thank you.

Is anyone else on the telephone wish to be heard?

MR. WEISS: Yes, Your Honor. This is Matt Weiss from Interstate. I just wanted to weigh -- I mean, I think kind of the conversation has gravitated towards this mediation privilege issue and whether the claim supplement should be -- protect -- I mean, limited as far as evidentiary value.

I think the way this all squares, you know, I go back to citing Rule 9009(a) and, you know, I think that probably it stands for nothing more than the proposition you can't disqual -- disregard the claim simply because the supplement wasn't included. But if what the debtor is proposing I think the language the debtor is suggesting here is actually stronger than a lot of other Diocese cases as far as, you know, your claim -- I don't know the exact wording. It may -- you know, ay be subject to disallowance or you may not be able to vote or pursue distribution. I think that's all relevant after because I think the key here is that, yes, well, not having the supplement they may not on first day invalidate the claim. You have to show -- to have a valid claim it still has to have prima facie validity under Rule 3001(f) and the case law we cited in our brief with LMI says to do that you need to show facts to support a claim under, you know, like a pleading standard. That's how it's been interpreted by a federal court.

And so yes, I mean, if you're including a supplement that's information that's certainly relevant. And the way it

will play out, if you don't have the necessary information to supplement and the debtor brings a claim objection, then you're in contested matters. The claimant will obviously have the ability to seek discovery as they need in connection with that contested matter.

So I think they would be able -- and like you said, you're -- I think it's appropriate you would allow them to amend the claim to include that information if needed. So I think the claimants' rights are protected here, as they should be.

You know, the only -- the main concern that we have as insurers and has been expressed is that, you know, yes, there -- you don't have to rely -- theoretically, if you didn't rely on the proof of claim and required other ways of establishing a claim, it just creates a lot more complications in the bankruptcy case.

I think Rockville Center is a good example of that where there's been 16 omnibus claim objections filed, so it's a -- become a major burden on the estate. It's a major burden on parties involved. I think frankly, it's a major burden on claimants. Rather than force -- not force -- requiring as a supplement to provide information necessary to flesh out their claim, the other information has to be provided eventually. So the alternative is depositions and interrogatories and to do that for 175 different claimants if it has to be done, if the

information is not being provided in the supplement, I think that just creates a lot of problems for the -- really, all the parties in interest in the case.

So I think that's why it should -- the claimants should be put on notice that they don't provide information to supplement they risk having their claim invalidated and the claim supplement should be used for any evidentiary purpose. Preclusive claimant supplements, yes, they're important for mediation, but they're also important to resolve the case and to have a finite understanding of what the liability to the debtor is and what they're subject to and what the insurers may have to potentially be required to provide payments for.

So, you know, it's not just a media -- it's not just for mediation. There's other important roles that the proof of claim and the supplement play in the bankruptcy case. So I think that's why we strongly believe that it should be mandatory and it should be -- should not be covered by any kind of privilege that limits its use in connection with the bankruptcy case. Thank you.

THE COURT: Thank you. Mr. Weiss, I didn't address this with the other -- and I'll certainly give you opportunities if you wish to be heard -- I didn't address the issue of the claims bar date. You know, you heard the argument as a pract -- I hear the Diocese and the Committee saying, look it, at this point given that it's already, you know,

October 3rd, we practically cannot get this out, get the appropriate notices with sufficient time. So November 24th isn't going to work. Mr. Scharf raised some concerns about, you know, having abuse claimants trying to experience this and work through this during the holidays. Do you have a position on the proposed date of January 18th as the bar date, Mr. Weiss?

MR. WEISS: No, we haven't a formal position on it. That seems reasonable to me.

THE COURT: Okay. I think there was some objection.

Mr. Kahane, I think you had objection. You were not happy with the date.

MR. KAHANE: No, I think that's fine, Your Honor. We don't have --

THE COURT: Okay. All right. Any other concerns, insurers? Okay. All right. Thank you.

Mr. Donato, I think I've hopefully -- I think I've got it, but if there's something you want to tell me briefly.

MR. DONATO: Be very, very brief. I'm not applying it to this case, but if you impose a mediation privilege on these forms, you have a situation where you have no checks and balances.

THE COURT: Let me ask you. It seems like there was a germ of a potential compromise about the scope of the privilege, just with Mr. Scharf. That's what I heard. Is that

worth exploring that piece?

I mean, I'll just tell you what I'm going to do. Okay. We're going to have language, just like in Syracuse, should file. Failure to file may -- I have to think about whether it's going to say may be the result of an objection or that sort of more plain language. Okay. So that's what's going to happen.

The attorneys are going to be able to sign the abuse claim supplemental and proof of claim. We're going to do January 18th as the claims bar date. And so then I will leave it to you whether you want me to reserve decision on this mediation privilege and I'll decide what the scope, if any, of the privilege is or whether you want me to give you -- counsel the opportunity to try to resolve that consensually.

MR. DONATO: I think it would make sense. I heard some possible germ of a resolution.

THE COURT: So did I.

MR. DONATO: I don't know how developed it was. If you're saying, give us a couple days kind of a thing; is that what you're thinking?

THE COURT: Yes. Yes.

MR. DONATO: I think that makes sense. We've worked out many, many things in the past.

I just want to make an observation, though. A mediation privilege means you'll never see the ACS. That means

you'll never have access to the ACS. With the utmost respect to that, not applying it to this case, a mediation privilege creates -- presents the opportunity for creativity because there's no check and balance. That's why they're doing it. They can do whatever they want. It's under penalty of perjury, but you'll never see it.

THE COURT: Okay. I understand there might be -- I don't think you're saying this to Mr. Scharf --

MR. DONATO: No, I said I'm not applying it to this case.

THE COURT: There may be other -- there may be other people who would take advantage of the mediation privilege. I appreciate that.

Having said that, the ostensive -- the argument being presented to me against the mediation privilege is not that and the argument being presented to me, as I think you could tell, has some traction, that I am by leaving the abuse claim supplement wide open and also having it be considered part of the proof of claim, I am subjecting -- I'm worried, honestly, that if I don't give the privilege given the concerns that are raised, nobody is going to fill out abuse claim settlements because they're going to be worried that it's going to be subject to proof of claim to Iqbal notice pleading standards and they're going to get a flood of objections or a significant number of them might. That's what I'm worried about.

And also that for those that do that that is not a proper result and not what the Code intends. Like I said, I think if people thought -- think that more should be asked in Form 410 in these type situations, to me that's an issue for Congress, not for me.

MR. DONATO: I understand.

THE COURT: But -- so -- but I think -- again, I think if there is an opportunity to -- I'm also sensitive to the, wait a minute, the Omaha problem and the, wait a minute, someone submitting something to this Court under penalty of perjury and they can't be cross-examined about it --

MR. DONATO: No check, no balance.

THE COURT: -- there's no -- it's basically just a free say whatever you want --

MR. DONATO: Right, right.

THE COURT: -- and a get-out-of-jail-free card, I'm not comfortable with that either.

But what I heard here was maybe we can --

MR. DONATO: Okay. And we'll work on that.

THE COURT: -- have both -- have the protection against Iqbal while also having some accountability, as you said, with checks -- check and balance.

MR. DONATO: We'll give it a shot. I'm not convinced we'll be able to do it.

Just two other quick observations. People have been

talking about pro ses. Let's stop. One hundred twenty-four lawsuits, a lawyer in every one. Okay. We've got all these people talking about, oh, if a pro se had to read this thing and saw the ACS and, oh, my goodness, we chill them. Stop. There's 124 lawsuits. The statute is closed. That doesn't mean there won't be some claims, but the 124 law firms. There's no pro se. So what they're doing is creating situations where, you know, you have to worry like, oh, wow, the pro se is looking at this.

You just heard Taylor Stippel. She says through Anderson's office they fill out the proofs of claim, they vet it, they do all that stuff. There's not a pro se concern here. What's going on is, as direct as I can be, there is an attempt by the Committee to alter the claims of due process. It's under the guise of protecting the abused claimants. Twenty-four Dioceses have entered orders like this. Claims have been filed without delay. There's 850 in Buffalo. There's 370 in Syracuse, 470 in -- that's not going to be a chilling thing.

What they don't want is to have to deal with the reality if the wheels come off there are claims that are not appropriate and they're altering the claims allowance process under Title 11 and that's what's wrong. But I'll take your invitation and maybe we can take a couple of days, see if there's a way that we can address it. If we can't and we'd like to -- I guess we would ask you to make the decision,

probably would like to have an opportunity to submit something to you on that.

THE COURT: Okay. All right. I do want to -- everyone stay after and get the -- my law clerk's email address because I do want Word versions of everyone's proposed bar date orders and abuse claim settlement forms as well.

But Mr. Scharf, you wish to be heard briefly?

MR. SCHARF: Just one clarification and then I just want to make a couple of observations. Just in terms of --

THE COURT: Can you use the microphone just because there's parties on the phone. I want to make sure they can hear.

MR. SCHARF: Just a couple of clarifications and then just a couple of comments.

In terms of a clarification, you've given us some guidance as to the direction of the Syracuse language. Attorneys can sign January 18 as a bar date.

In terms of the questions on the form have you made a --

THE COURT: So I'm going to work through that and it's going to be more exploratory than the one you proposed and less exploratory that the ones that the Committee proposed -- or than the insurers proposed. I will say this. I think you've already sort of told me the questions that you find most objectionable, Mr. Scharf, or that would be most likely to be a

disincentive to claimants coming forward and I believe the insurers have given me a good sense of the questions they consider pretty much essential to be included.

But I'll give parties leave to submit if you want -- you know, please don't -- I don't need another 25 pages, but a small additional opportunity for briefing if there were particular questions that beyond what you've already referenced that you felt were particularly objectionable and burdensome or that the insurers felt were particularly essential to efficient, expeditious resolution of the mediation process.

MR. SCHARF: Sure. I think our response --

THE COURT: I think it does too that way.

MR. SCHARF: -- is pretty comprehensive on that. I'll just double-check in case there's something we missed.

THE COURT: Okay.

MR. SCHARF: And then just in terms of looking at the veracity of these claims trying to -- I'm just going to address the insurers aren't looking for the information. They're looking for an admission. And, you know, part of what we may be able to accomplish is to -- in the terms of limiting the use of the form, maybe we can come to some resolution on that. I -- we hear you.

THE COURT: Yeah. It seems to me that -- yeah, it's not -- maybe it's -- this is something that I'm iterating off the top of my head, but it seems like a stipulation that it

shall not be deemed part of their proof of claim for claims allowance purposes is -- might be where you go with it.

MR. SCHARF: Sure.

THE COURT: I don't know, but that's a thought. I'm not saying that that's what I would rule if you don't resolve it, but that's --

MR. SCHARF: Right.

THE COURT: That may -- I'm -- if there is a way to allow for the checks and balance, Mr. Donato has referenced without the bait-and-switch concern that I referenced. Then that would be something I think that would make sense.

MR. SCHARF: Sure, I think we can -- with your guidance I think we can all put our thinking caps on and try to do that in the next couple of days.

THE COURT: Thank you. Okay. So I will reserve decision on the motion to set a bar date. I will not issue anything until -- is a week -- I know we have the holiday coming up. Is a week to October 10th give the parties leave to submit additional submissions on or before October 10th, give you more time than that?

UNIDENTIFIED SPEAKER: Just one day, October 11th.

THE COURT: October 11. October 11th for additional submissions. Actually, that will be deemed submitted as of October 11th. Obviously, if you're able to reach consent language let me know by then, otherwise I'll issue my own order

and I will be resolving the scope of the privilege, if any, that would be afforded the abuse claim settlement. Very good. Thank you.

Anything further -- thank you for a well organized argument and we look forward to seeing you again. Thank you.

ATTORNEYS: Thank you, Your Honor.

COURTROOM DEPUTY: All rise. Court is adjourned.

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C E R T I F I C A T I O N

I, RUTH ANN HAGER, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Ruth Ann Hager
RUTH ANN HAGER DATE: October 25, 2023